

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, 16-CR-614 (AMD)
4 Plaintiff, United States Courthouse
5 -against- March 22, 2019
6 DAN ZHONG, 9:30 a.m.
7 Defendant.
8 -----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE ANNE DONNELLY
11 UNITED STATES DISTRICT JUDGE
12 BEFORE A JURY

11 APPEARANCES

12 For the Government: UNITED STATES ATTORNEY'S OFFICE
13 Eastern District of New York
14 271 Cadman Plaza East
15 Brooklyn, New York 11201
16 BY: ALEXANDER A. SOLOMON
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18 CRAIG HEEREN
19 Assistant United States Attorneys

20 For the Defendant: PROSKAUER ROSE LLP
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22 New York, New York 10036-8299
23 BY: ROBERT J. CLEARY, ESQ.
24 DIETRICH L. SNELL, ESQ.
25 SAMANTHA SPRINGER, ESQ.
BRITTANY BENAVIDEZ, ESQ.

Also Present: HEATHER BUTLER, PARALEGAL
S.A. RYAN CAMPBELL

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Proceedings recorded by mechanical stenography. Transcript
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Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter

1 (In open court.)

2 (WHEREUPON, commencing at 10:06 a.m., the following
3 further proceedings were had in open court, outside the
4 presence and hearing of the jury, to wit:)

5 THE COURT: All right. So I guess last night,
6 sometime around 7:00, little -- between 6:00 and 7:00, we got
7 a letter from the defense. I guess the rage just built up all
8 day so we didn't really have a chance to look at it until
9 later.

10 I am sure you read it. The first complaint is that
11 they don't want -- you don't want to have the conscious
12 avoidance charge in on the theory that you didn't have notice
13 of when he summed up.

14 I looked over the transcript of the arguments, and
15 the conversation we had before, and I remain convinced that
16 this is not a big deal. But, on balance, the thing I said
17 that I was going to think about and listen to the summations
18 was a different topic. So I won't give the conscious
19 avoidance charge.

20 The second thing about what people said about
21 material omissions, I mean, I tell the jury that they take the
22 law from me. There's no material omission instruction in the
23 final instructions. So it was a motion for a mistrial, it is
24 denied.

25 Anything else that we have to do?

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1 MR. CLEARY: Just one other thing I need to let you
2 know before you charge the jury, Judge, and this is under
3 Rule 32.2.

4 There are forfeiture allegations in the case, as you
5 know. And as the government knows, we have not waived our
6 rights to a jury determination on that issue. So in the event
7 of a conviction under 32.2, I'm going to request that the jury
8 be retained to determine that issue.

9 THE COURT: So that was a thing that might have been
10 interesting to know when we selected the jury. What's your
11 position on this?

12 MR. HEEREN: Your Honor, it's true that if
13 requested, as was just requested now, it can go to the jury
14 instead of being decided by the judge, which is what we
15 expected to happen when it wasn't raised after we put --

16 THE COURT: Is it waived by not raising it?

17 MR. HEEREN: Yes, it is.

18 THE COURT: Is there a rule that you can cite that
19 says it is waived?

20 MR. HEEREN: 32.2 says before the jurors deliberate.
21 So I think what Mr. Cleary is saying is they're raising it
22 now, they're not deliberating yet, so he hasn't waived it.

23 THE COURT: Oh. So he hasn't waived it. I have to
24 say, I find it -- I'm trying to think of what the word is,
25 annoying, that I am hearing about this right before I am

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1 supposed to charge the jury. And, again, I am not sure why
2 this couldn't have been raised earlier.

3 MR. CLEARY: So my record is clear, Your Honor, I
4 know I didn't raise it with the Court. I apologize for that.

5 THE COURT: Don't you think when I'm selecting a
6 jury, that that's something that they might be interested to
7 know, that they might have to hang around here after a
8 verdict? I mean, these people have lives. They have given up
9 their lives for this. And I would give them notice of that.
10 And I am about as mad as I've been during the course of this
11 trial. Why didn't you tell me this before?

12 MR. CLEARY: I apologize, Your Honor. I didn't
13 think of it. I did tell the government. The government's
14 known about this since the trial started.

15 THE COURT: Okay. How would this procedure work?
16 How much extra time would they have to spend? How do you
17 propose I tell them that, by the way. By the way -- and when
18 do you think I should do that? Before I give them the charge?

19 MR. CLEARY: You could either to it -- I've only
20 done this once before in my career, Your Honor, and the way it
21 was done that time --

22 THE COURT: Did you give the judge notice before you
23 did it?

24 MR. CLEARY: We did not, I don't believe, and the
25 judge told them after they came back with the verdict. And

1 what happened there, I don't know if that would happen here,
2 is neither the government nor the defense put on any evidence,
3 there was a short argument by both sides, and the jury made
4 their decision.

5 THE COURT: So what would happen in this situation?
6 Maybe I don't have to get so steamed up. But what would
7 happen in this situation? Would there be evidence?

8 MR. CLEARY: That's up to them, Your Honor. We
9 don't have any evidence to offer.

10 MR. HEEREN: So there's two issues that --
11 regardless of the evidence. One is, they need to be charged
12 on it. As we indicated, we didn't provide a charge because we
13 put them on notice and we expected that since they hadn't
14 raised it again, we'd be able to go to the Court afterwards
15 and have a determination by the judge on it.

16 Now they are making this argument, the jury will
17 need to be charged on it.

18 THE COURT: It would be a separate --

19 MR. HEEREN: It would be a separate charge we could
20 do afterwards. They also will need a separate verdict form,
21 too, that will --

22 THE COURT: I am not going to tell them before I
23 charge. I am not going to tell them that's a possibility. So
24 we will see what happens. If there's an acquittal, we don't
25 have to worry about it. If there's a conviction, then we

1 will.

2 But let's just -- I mean, I don't think it is too
3 much to ask to give a heads up that this is something you were
4 thinking of. And I just -- I don't understand why that
5 wouldn't be something that you would raise so that I could
6 give the jurors some notice about it. I'm mystified by this.
7 But the situation is what it is. What's your view of what
8 would happen at a proceeding about forfeiture? Would you just
9 use bank records?

10 MR. HEEREN: Yes. I mean, I think at the very least
11 we'd have to make arguments. I don't know if there's anything
12 more that needs to go in. I don't think so.

13 THE COURT: All right. Well, maybe it is not such
14 a big deal. Is there anything else that you might want to
15 share with me before we start this process?

16 MR. CLEARY: There is not, Your Honor.

17 THE COURT: Is there anything you all have anything
18 that's on your mind?

19 MR. HEEREN: Your Honor, just briefly, I would like
20 to put on record regarding this omission argument by them.

21 THE COURT: You won that one.

22 MR. HEEREN: I know.

23 THE COURT: Don't snatch defeat from the jaws of
24 victory.

25 MR. HEEREN: I will not, Your Honor, I don't think I

1 will, but I just want to point out, because it is important.
2 The claim was that they were not on notice of this. They were
3 on notice since June of 2018 about this. And what I want to
4 flag for the Court is, the letter in which we put them on
5 notice on is the same letter that Mr. Snell handed up to you
6 and was heavily redacted.

7 So we had put in that letter, as -- I won't read the
8 whole thing, but the end of it, were, in fact, brought to the
9 United States to work on private property, in addition to PRC
10 government facilities, contrary to the terms of the visas.

11 THE COURT: All right. Just so it is clear, I don't
12 think Mr. Snell was redacting that so I wouldn't see it. I
13 think the purpose of it was, you wanted me to show the jury.

14 MR. SNELL: That's right.

15 THE COURT: I don't think he was trying to trick me.

16 MR. SNELL: I believe I actually showed the Court
17 the unredacted version and the redacted version.

18 THE COURT: I just wanted to make it clear, I don't
19 think anybody's saying that.
20 Let's get the jury.

21 MR. HEEREN: Your Honor, are we also getting the
22 verdict form that you're giving to --

23 THE COURT: We didn't give them that?

24 THE LAW CLERK: We didn't give them that.

25 THE COURT: Let's give it to them.

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1 Well, you submitted one and you did not submit a
2 sample verdict form. You did?

3 MR. SNELL: No, Judge, we did not submit our own
4 verdict form. We had one objection to the government's, but
5 we thought we'd just see the Court's, and assumed that the
6 Court's was consistent with the charge.

7 THE COURT: Tell Donna not to bring them out yet.
8 Is there anything else? Verdict sheets? Charge?

9 MR. SNELL: Nothing.

10 (Short pause.)

11 THE COURT: All right. You guys don't have a copy
12 of your verdict sheet, do you?

13 THE LAW CLERK: I have it right here.

14 THE COURT: Never mind. We're good.
15 Everybody have a copy?

16 MR. HEEREN: Yes.

17 MR. SNELL: Yes.

18 THE COURT: What's the trouble?

19 MR. SNELL: Your Honor, we just have one very minor
20 request, and that's with respect to Count 3, the description
21 of Count 3 in the government's proposed verdict sheet is
22 document servitude, and in the judge's charge, in the Court's
23 charge, it's concealing passports and immigration documents in
24 connection with forced labor.

25 THE COURT: All right. We'll change it.

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1 MR. HEEREN: No objection, Your Honor.

2 MR. SNELL: That's it.

3 THE COURT: That's it? All right.

4 I'm sorry that I lost my patience there, but I
5 really try when I'm selecting a jury to give them an idea of
6 what this job is going to entail. And it's just -- it makes
7 me mad that I feel that I -- that they may feel they have been
8 mislead. So I wish this hadn't happened.
9 What is it that we're calling it?

10 MR. SNELL: It is in the Court's charge, Count 3.

11 THE COURT: I see.

12 MR. SNELL: Concealing passports.

13 THE COURT: Okay.

14 MR. SNELL: And immigration documents in connection
15 with forced labor.

16 THE COURT: Okay. We're ready.

17 (WHEREUPON, 10:21 a.m., the jury entered the
18 courtroom.)

19 THE COURT: Good morning, everyone.

20 THE JURY: Good morning.

21 THE COURT: Glad you got here on this rainy day.

22 You have now heard all of the evidence in the case.
23 You've heard the lawyers' arguments. And I am now going to
24 instruct you on the law that applies to this case.

25 You've all paid very careful attention during the

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1 course of the trial, and I am going to ask that you continue
2 to pay attention as I give you these instructions.

3 These instructions are going to be divided into
4 three parts. In the first section, I'll instruct you about
5 the general rules that define and govern your duties as jurors
6 in a criminal case. In the second part of the instructions,
7 I'll talk to you about the crimes that have been charged, and
8 the elements that the government has to prove for each crime.

9 In the final section of the charge, I am going to
10 talk to you about the process of your deliberations.

11 The first thing I am going to do is to remind you of
12 your role as jurors and what my role is as the judge.

13 Your duty, as I told you when you were selected and
14 in the opening instructions, is to find the facts from all of
15 the evidence in the case.

16 You are the sole judges of the facts, and it is for
17 you and you alone to determine the weight that you are going
18 to give the evidence, to resolve any conflicts in the
19 evidence, and to draw those inferences that you believe are
20 reasonable and warranted from the evidence. My job is to
21 instruct you on the law. You must follow the law as I give it
22 to you, even if you don't agree with it. You must not be
23 concerned about the wisdom of any rule of law that I state, no
24 matter what opinion you might have about what the law may be
25 or what you think it should be, you would violate your oaths

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1 as jurors if you based your verdict on anything other than the
2 law as I define it for you.

3 If any of the lawyers have said something about the
4 law that is different from my instructions, you must ignore it
5 and be guided only by what I instruct you on the law. You
6 should not single out any one instruction, but consider my
7 instructions as a whole.

8 Since it is your job and not mine to determine what
9 the facts are, I have not expressed or implied an opinion
10 about how you should do your job in deciding the facts of this
11 case. You shouldn't conclude from anything that I might have
12 said during the trial, including these instructions, that I
13 have any opinion about the facts or the merits of this case.
14 There were times when I asked a question of some of the
15 witnesses, but there's nothing significant about that, and you
16 shouldn't assume there is just because I asked them.

17 The fact that the government is prosecuting this
18 case in the name of the United States of America should not
19 affect your evaluation of the evidence and the facts before
20 you. The government is not entitled to greater consideration
21 than the defendant. By the same token, it is entitled to no
22 less consideration. All parties, the government or
23 individuals, stand as equals in this court and are entitled to
24 equal consideration. Neither the government nor the defendant
25 is entitled to any sympathy or favor.

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1 It is your responsibility to decide the facts with
2 complete fairness and impartiality, without bias or prejudice
3 or sympathy for any party. You must perform your duty as a
4 juror with complete fairness and impartiality. You must
5 carefully and impartially consider the evidence, you must
6 follow the law as I give it to you, and reach a just verdict
7 regardless of the consequences.

8 It would be improper to consider any feelings that
9 you might have about the defendant's race, religion, national
10 origin, ethnic background, occupation, gender, or age. Every
11 person is entitled to the presumption of innocence, and the
12 government has the same burden of proof as to every defendant.
13 It would also be improper for you to permit any feelings that
14 you might have about the nature of the crimes charged to
15 influence your decision making process.

16 The indictment is the document that the government
17 uses to give the defendant notice of the charges against him
18 and to bring him here to court. It is an accusation and
19 nothing more. The indictment is not evidence, and it is
20 entitled to no weight in your determination of the facts. The
21 defendant has pled not guilty to the indictment. The burden
22 is on the government to prove the defendant's guilt beyond a
23 reasonable doubt. This burden never shifts to the defendant.
24 He does not have to prove that he is innocent, he does not
25 have to present any evidence at all. If the government does

JURY CHARGE

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1 not meet its burden of proving the defendant's guilt beyond a
2 reasonable doubt, you must reach a verdict of not guilty.

3 The defendant is presumed to be innocent of all of
4 the charges against him. The presumption of innocence alone,
5 unless it is overcome by proof beyond a reasonable doubt, is
6 sufficient to acquit the defendant. The defendant is presumed
7 innocent unless and until you decide unanimously that the
8 government has met its burden and has proven him guilty beyond
9 a reasonable doubt. This presumption was with the defendant
10 when the trial began, it remains with him now, and will
11 continue into your deliberations unless and until you are
12 convinced that the government has proved his guilt beyond a
13 reasonable doubt.

14 What is a reasonable doubt? It's a doubt that is
15 based upon reason and common sense, the kind of doubt that
16 would cause a reasonable person to hesitate to rely on it and
17 act on it in a matter of importance in his or her personal
18 life.

19 A reasonable doubt is not a caprice or a whim. It
20 is not speculation. It is not suspicion. It is not an excuse
21 to avoid an unpleasant duty. It should not be based on
22 sympathy. Proof beyond a reasonable doubt is not proof beyond
23 all doubt; rather, it is proof that is so convincing that a
24 reasonable person, based on that proof, would not hesitate to
25 draw the conclusion that's offered by the government.

JURY CHARGE

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1 If after a fair and impartial consideration of all
2 the evidence that you heard during the course of this trial
3 you have a reasonable doubt, it is your duty to acquit the
4 defendant. On the other hand, if after fair and impartial
5 consideration of all of the evidence you have heard, you are
6 satisfied of the defendant's guilt beyond a reasonable doubt,
7 you should vote to convict.

8 Under your oaths as jurors, you are not permitted to
9 consider the question of punishment that the defendant might
10 receive if he is convicted. It is my duty and my duty alone
11 to determine an appropriate sentence. It is your job to weigh
12 the evidence in the case and to determine whether the
13 defendant is guilty beyond a reasonable doubt, based solely on
14 the evidence.

15 I am now going to talk to you about what evidence is
16 and how you should consider it.

17 You must determine the facts in this case based only
18 on the evidence that was presented and on the inferences that
19 you can reasonably draw from that evidence.

20 The evidence consists of the testimony of the
21 witnesses on direct and cross examination, that's the question
22 plus the answer, the physical exhibits that came into
23 evidence, and stipulations between the parties. A
24 stipulation, I think as I have told you before, is an
25 agreement between the parties that certain facts are true.

JURY CHARGE

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1 You should regard those agreed upon facts as true.

2 There are some things that are not evidence, and you
3 should disregard them when you are deciding what the facts are
4 in this case. First, the arguments and statements by the
5 lawyers at any point during the trial, but including their
6 opening statements and the summations, those are not evidence.
7 If anything that they said about the evidence and the -- at
8 any point during the trial, the openings, the closings, if
9 that conflicts with your recollection of the evidence, it is
10 your recollection of the evidence that controls.

11 The second thing, questions that a lawyer puts to a
12 witness are not evidence. And as I said before, I think I may
13 have asked a few questions of some of the witnesses, and I am
14 going to remind you again, that that doesn't mean I have an
15 opinion about the case. If I asked a question, it was either
16 to make something clear because I didn't understand it, or to
17 move the trial along. Don't attach any significance to the
18 questions that I ask. As I said before, you must not consider
19 anything that I've said or done during the course of the trial
20 in determining whether the defendant is guilty or not guilty
21 of any of these charges. I don't have anything view about the
22 defendant's guilt or innocence. It is your job to determine
23 the facts. It is not mine.

24 The third rule to keep in mind, objections to the
25 questions or exhibits are also not evidence. Statements, if

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1 somebody made a statement while they made an objection, that's
2 not evidence either. I told you I think when you were
3 selected that the attorneys have the right and the duty to
4 object and ask for a sidebar conference if they believe that
5 evidence shouldn't be received. But don't be influenced by
6 any objections or by any of my rulings on the objections. If
7 I sustained an objection, ignore the question. If I overruled
8 an objection, treat the answer just like any other answer.

9 Any testimony that I've stricken from the record and
10 told you to disregard is not evidence. And the last thing,
11 anything that you might have heard or seen outside of the
12 courtroom is not evidence. I told you when you were selected
13 that you must base your verdict only on the evidence that's
14 presented at the trial or the lack of the evidence. I have
15 directed you not to read any articles or watch any television
16 or listen to the radio, to the extent there's been any news
17 about the case that. That instruction continues now, and it
18 will continue until the end of the case until after you have
19 rendered your verdict.

20 There was some evidence that was received for a
21 limited purpose only. When that evidence was received, I
22 instructed you that you could only consider it for a limited
23 purpose. I remind you that you must continue to follow that
24 limiting instruction, and you can't consider the evidence that
25 I permitted for any other purpose or to prove an other issue.

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1 I gave you an instruction about conduct that
2 occurred before the time period that's charged in the
3 indictment.

4 The indictment charges the defendant with crimes
5 that are based on conduct and events that occurred between
6 2010 and 2016.

7 I told you that you would hear evidence about
8 conduct and evidence that took place before that time, before
9 2010, and that you could consider that evidence as direct
10 evidence of the forced labor conspiracy and of the defendant's
11 intent, planning, and knowledge of the forced labor
12 conspiracy. And you could also consider that evidence as
13 relevant background information about the conspiracy.
14 However, in order to find the defendant guilty of any of the
15 charged crimes, you have to remember that the government must
16 prove beyond a reasonable doubt that the defendant committed
17 the alleged crimes during the time period that's charged in
18 the indictment.

19 Now, there are generally speaking two kinds of
20 evidence. There's direct evidence and there's circumstantial
21 evidence. You can use both types in reaching your verdict in
22 this case. Direct evidence is testimony from a witness about
23 something that she knows from her own senses. Something she
24 saw, something she felt, something she heard, tasted. Things
25 like that.

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1 The other kind of evidence, circumstantial evidence,
2 is proof of a chain of circumstances that point to the
3 existence or nonexistence of certain facts. And there's a
4 very simple example of circumstantial evidence.

5 Let's say that you came to court one day when the
6 weather was clear and sunny and dry. You sit in this
7 windowless room all day, and then you see someone coming in
8 with a wet umbrella, or a wet raincoat, someone's shaking the
9 umbrella. Of course you can't look outside the courtroom,
10 because there are no windows, and determine whether or not it
11 is raining. So you have no direct evidence that it is
12 raining.

13 But on the combination of facts that I described for
14 you, it would be reasonable and logical for you to infer from
15 those circumstances, the wet coat and the dripping umbrella,
16 that while you were sitting here in court, that it rained
17 outside.

18 That is really all there is to circumstantial
19 evidence. On the basis of reason, experience, and common
20 sense, you may infer the existence or nonexistence of a fact
21 from one or more established facts.

22 Inferences are deductions or conclusions that your
23 reason and your common sense lead you to draw from the facts
24 that were established from the evidence. Use your common
25 sense in drawing inferences. An inference is not a suspicion

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1 or a guess. It is a reasoned, logical decision to conclude
2 that a disputed fact exists -- a disputed fact exists on the
3 basis of another fact that you know exists, just like that
4 rain example.

5 So while you're considering the evidence that
6 presented to you, you are permitted to draw reasonable
7 inferences from the proven facts in this trial. Our law makes
8 no distinction between the weight that you can give to direct
9 evidence or to circumstantial evidence. One is not better
10 than the other. You must base your verdict on a reasonable
11 assessment of all of the evidence in the case. Let me remind
12 you that whether your -- whether it is based on direct or
13 circumstantial evidence or upon logical, reasonable inferences
14 that are drawn from the evidence, you must be convinced of the
15 defendant's guilt beyond a reasonable doubt before you can
16 convict.

17 The government has presented exhibits in the form of
18 charts and summaries. These were shown to you in order to
19 save some time, to make evidence more meaningful, and to
20 assist you in considering the evidence. It is up to you to
21 decide whether the charts or summaries correctly present the
22 information that's contained in the testimony and in the
23 exhibits on which those charts and summaries are based.
24 Because those charts and summaries were admitted into
25 evidence, you may consider them as evidence, but you are to

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1 give them no greater consideration than you would give to the
2 evidence on which they are based.

3 During the trial, you heard from some witnesses who
4 testified in Mandarin and whose testimony was simultaneously
5 translated into English. There were also documents that were
6 partially or entirely written in Chinese, and you were given
7 English translations of those documents. The interpreters
8 translated the witnesses' testimony, and the parties agreed on
9 the English translations of the documents and records.
10 Chinese to English translations of that evidence have been
11 admitted into evidence. All jurors have to consider the same
12 evidence, so if anybody speaks Mandarin or reads Mandarin, you
13 must base your decision on the evidence that's presented in
14 the English translation.

15 I am going to talk to you now about evaluating the
16 witnesses and the witnesses' credibility. You are the sole
17 judges of the witnesses' and the weight that their testimony
18 deserves. There is no magical formula for determining whether
19 a witness is credible. You all make these decisions in your
20 own lives, and the standards that you use in your own lives to
21 determine whether you believe something that someone is
22 telling you are the staple standards that you should use here.
23 Your determination of credibility depends on the impression
24 that the witness made upon you as to whether that witness was
25 telling the truth or giving you an accurate version of events.

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1 You should be guided by your common sense.

2 In making your decision about credibility, you can
3 take into account any number of factors. I am going to
4 suggest a few for you: The witness' opportunity to see, hear,
5 and know about the events that the witness described; the
6 witness' ability to recall and describe those things
7 accurately; the witness' manner of testifying. Was the
8 witness candid and forthright, or did he seem to be hiding
9 something; was the witness evasive or suspect in some way; how
10 did the witness' testimony on direct examination compare with
11 her testimony on cross examination; the reasonableness of the
12 witness' testimony in light of all the other evidence in the
13 case; whether the witness had any possible bias, any
14 relationship to the government or the defendant, any loyalty
15 or any motive to shade the truth, or any possible interest in
16 the outcome of the trial, and whether the witness' testimony
17 was contradicted by his other testimony, by what the witness
18 said or did on another occasion, by other witness' testimony,
19 or by other evidence.

20 Now, inconsistencies and discrepancies in a witness'
21 testimony or between the testimony of different witnesses, may
22 or may not cause you to discredit the witness' testimony. If
23 there is a discrepancy, or an inconsistency, you should
24 consider whether it relates to something that's important or
25 whether it is unimportant, whether the discrepancy or the

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1 mistake was intentional, or whether it was the result of an
2 innocent mistake, and you should also consider whether there's
3 a common sense explanation for the inconsistency. If you
4 determine that a witness has purposely lied to you, that's
5 important, and you should consider it seriously.

6 A witness' testimony may be discredited or impeached
7 by showing that the witness previously said something
8 inconsistent with the witness' testimony in front of you. It
9 is your job to determine the weight, if any, to be given to
10 all or part of the testimony of a witness who's been impeached
11 by prior inconsistent statements.

12 If you find that a witness has made an inconsistent
13 statement, you can consider that fact in your assessment of
14 the witness' credibility. You can consider whether you
15 believe the witness or accept the witness' testimony in light
16 of the prior inconsistent statement. Again, in making this
17 determination, you should consider the importance of the
18 subject matter of this statement. If you find that the matter
19 is relatively unimportant, you may decide not to attach much
20 significance to the inconsistency. If you find that the
21 matter is important, you may decide that it casts substantial
22 doubt on the witness' credibility.

23 If you find that a witness' statement on the stand
24 is false in whole or in part, you can disregard the particular
25 part that you find to be false, or you can disregard the

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1 witness' entire testimony.

2 You heard expert witness testimony from Luis
3 De Baca. He testified as an expert in human trafficking and
4 forced labor. An expert witness, I think as I told you at the
5 time that he testified, is allowed to express an opinion on
6 matters about which the witness has special knowledge or
7 training. Ordinarily, the rules of evidence don't permit
8 witnesses to testify about their conclusions or their
9 opinions, but experts are the exception to this rule. If
10 specialized knowledge will help you as jurors understand the
11 evidence or decide a disputed fact, a witness qualified as an
12 expert by knowledge, skill, experience, training, or education
13 may testify about that evidence or facts in the form of an
14 opinion.

15 You should consider the expert testimony you heard
16 in this case and give it the weight that you think it
17 deserves. If you think that the witness' opinion is not based
18 on enough education or experience, or that the reasons that
19 supported the opinion are not sound, or that the expert's
20 opinion is outweighed by other evidence, you can disregard the
21 opinion in its entirety.

22 In short, the expert witness is the same as any
23 other witness. You should consider his qualification,
24 experience, any interest he might have in the outcome of the
25 case, his reason for testifying, his demeanor, and all of

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1 those other factors that you consider in assessing a witness'
2 credibility. You shouldn't accept the testimony of an expert
3 just because he is an expert, or merely because I allowed the
4 witness to testify about his opinion, nor should you
5 substitute it for your own reason, judgment, and common sense.
6 The determination of the facts rest entirely with you.

7 You also have heard from some law enforcement
8 witnesses. You should evaluate these witnesses in the same
9 way that you evaluate the testimony of other witnesses -- of
10 any other witness. The fact that a witness is a law
11 enforcement agent does not mean that you should give that
12 witness' testimony any more or less consideration than any
13 other witness. You should use all of those tests of
14 credibility that we just talked about to evaluate the law
15 enforcement witness' testimony. It is up to you to decide,
16 after you review the evidence, whether to accept the testimony
17 of law enforcement witnesses and to give it the weight that
18 you believe it deserves.

19 You also heard testimony from two informant
20 witnesses, Ray Tan and Ken Wang. Informants are witnesses
21 whom the government paid for information about a defendant.
22 Sometimes the government uses informants who may conceal their
23 true identities in order to investigate suspected violations
24 of the law. There is nothing improper or illegal in the
25 government using these techniques. Indeed, it would be

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1 extremely difficult to find certain kinds of evidence without
2 informants. Whether or not you approve of using an informant
3 to defect unlawful activity is not to enter into your
4 deliberations in any way.

5 The defendant did not testify in this case. Under
6 our constitution, the defendant in a criminal case never has
7 any duty to testify or to come forward with evidence. This is
8 because the burden of proof remains on the government at all
9 times and the defendant is presumed innocent. A defendant is
10 never required to prove that he is innocent. You may not
11 attach any significance to the fact that the defendant did not
12 testify. You may not draw any inference against the defendant
13 because he did not testify. You may not consider this against
14 the defendant in any way during your deliberations in the jury
15 room.

16 During the trial, counsel read stipulations about
17 what three witnesses would have said had they testified before
18 you in person. These witnesses were not under oath. The
19 government and defendant have agreed about what the testimony
20 of these witnesses would be if they had been called as
21 witnesses at trial. The government and the defendant have not
22 agreed, however, that the stipulation is true or correct.
23 They have just agreed about the -- what the witnesses would
24 have said had they testified.

25 During the course of the trial, you heard testimony

1 that the lawyers for both parties interviewed witnesses when
2 prepping for trial. You must not draw any unfavorable
3 inference from that fact. On the contrary, lawyers are
4 obligated to prepare for their case as thoroughly as possible,
5 and in the discharge of that responsibility properly interview
6 witnesses in preparation for trial.

7 Now, as I will explain to you in the next portion of
8 the charge, some of the charges against the defendant allege
9 that he conspired to violate certain federal laws. Because of
10 that, I have admitted into evidence certain acts and
11 statements of other people whom the government alleges were
12 coconspirators of the defendant.

13 The reason that we allow this evidence has to do
14 with the nature of the crime of conspiracy, as I said, I will
15 explain to you shortly. A conspiracy is often referred to as
16 a partnership in crime. Thus, as in other types of
17 partnerships, when people enter into conspiracy to do
18 something illegal, they each become an agent for the other
19 conspirators in carrying out the conspiracy.

20 Accordingly, the reasonably foreseeable acts,
21 declarations, and statements of any member of the conspiracy
22 and in furtherance of the purpose of the conspiracy, are
23 deemed to be the acts of all of the members and all of the
24 members of the conspiracy are responsible for each other acts,
25 declarations, and statements. Thus, if you find beyond a

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1 reasonable doubt that the defendant was a member of a criminal
2 conspiracy charged, then you may also consider any of the
3 actions or statements of the people that you find to be
4 members of that conspiracy. This is the case even if those
5 actions or statements were made when the defendant wasn't
6 there and without his knowledge.

7 However, before you may consider the statements or
8 acts of a coconspiracy in evaluating the defendant's guilt or
9 innocence, you must first determine that the act and
10 statements were made during the existence and in furtherance
11 of the unlawful scheme. If the acts were done or the
12 statements were made by somebody who was not a member of the
13 conspiracy, or if they were not done or said in furtherance of
14 that conspiracy, you may not consider them as evidence against
15 the defendant.

16 You have heard evidence about the involvement of
17 certain other people in the activities that are referred to in
18 the indictment. You may not draw any inference, favorable or
19 unfavorable, to the government or the defendant from the fact
20 that those people are not on trial before you. You should not
21 speculate about why these people are not on trial before you,
22 and you should not allow their absence to influence you in any
23 way or influence your deliberations in this case. Your
24 concern is solely with the defendant who is on trial before
25 you.

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1 The law does not require either party to call as
2 witnesses every person who might have been present at the time
3 or place involved in the case or who may appear to have some
4 knowledge of the issue at trial. Nor does the law require any
5 party to produce all papers and things that are mentioned
6 during the course of the trial and to introduce them into the
7 evidence.

8 Both the government and the defense have the same
9 power to subpoena witnesses to testify on their behalf. You
10 should remember that there is no side has a duty to call a
11 witness whose testimony would be cumulative of testimony
12 that's already in evidence, or who would just provide
13 additional testimony about facts that are already in evidence.
14 I'm reminding you that the defendant has no obligation to
15 present any evidence at all. Only the government has the
16 burden of proof.

17 Although the government does bear the burden of
18 proof, and although a reasonable doubt can arise from the lack
19 of evidence, the law does not require that law enforcement
20 authorities use any particular investigative techniques to
21 uncover or prosecute crime. Law enforcement techniques are
22 not your concern. Your concern is to determine whether, based
23 upon all the evidence that's been presented in the case, the
24 government has proven the defendant's guilt beyond a
25 reasonable doubt.

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1 During the trial you did hear evidence about a
2 variety of investigative techniques and methods of collecting
3 evidence. I instruct you that any evidence that was presented
4 to you was obtained legally and you can consider it. The
5 methods used to collect evidence or to investigate should not
6 enter into your deliberations in any respect.

7 So now we are on the second part of the charge.
8 We're moving along well.

9 All right. There are five -- I am going to explain
10 to you what the elements of each of the crimes are that's
11 charged in the indictment, and these are elements that the
12 government must prove beyond a reasonable doubt.

13 The indictment contains five different counts, and
14 you'll be called upon to render a separate verdict as to each
15 count. Each count charges the defendant with a different
16 crime. You must consider those -- each count separately and
17 return a separate verdict of guilty or not guilty for each of
18 the counts. Whether you find the defendant guilty or not
19 guilty of one offense should not affect your verdict as to any
20 other offense that's charged.

21 So we're going to start with the indictment and what
22 each count charges. And then I am going to explain to you the
23 law regarding each count.

24 So first we'll start with a summary of what those
25 counts are.

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1 Count 1 charges the defendant with participating in
2 a conspiracy to provide or obtain forced labor and to benefit
3 from forced labor.

4 Count 2 charges the defendant with providing or
5 obtaining forced labor and benefiting from forced labor.

6 Count 3 charges the defendant with withholding
7 passports in connection with the commission of a forced labor
8 offense.

9 Count 4 charges the defendant with participating in
10 a conspiracy to smuggle aliens for purpose of financial gain.

11 Count 5 charges the defendant with participating in
12 a visa fraud conspiracy.

13 You have to come to a verdict on each of these five
14 counts. In your deliberations, you should refer to the text
15 of the indictment, which I will read to you now.

16 Count 1 of the indictment charges that in or about
17 and between January 2010 and November 2016, both dates being
18 approximate and inclusive, within the Eastern District of New
19 York and elsewhere, the defendant, Dan Zhong, together with
20 others, did knowingly and intentionally conspire to, one,
21 provide and obtain the labor and services of one or more
22 persons by means of, (a), physical restraint, (b), serious
23 harm and threats of serious harm to such persons and other
24 persons, (c), the abuse and threatened abuse of law and legal
25 process, (d), a scheme, plan, and pattern intended to cause

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1 such persons to believe that if they did not perform such
2 labor and services, they would suffer serious harm and
3 physical restraint, contrary to the Title 18, United States
4 Code, Section 1589(a), and, (2), benefit, financially and by
5 receiving one or more things of value from participation in a
6 venture that engaged in such acts, knowing and in reckless
7 disregard of the fact that such venture had engaged in
8 providing and obtaining labor and services by any such means,
9 contrary to Title 18, United States Code, Section 1589(b).

10 Count 2 of the indictment charges that in or about
11 and between January 2010 and November 2016, both dates being
12 approximate and inclusive, within the Eastern District of New
13 York and elsewhere, the defendant Dan Zhong, together with
14 others, did knowingly and intentionally provide and obtain the
15 labor and services of one or more persons by means of physical
16 restraint, serious harm and threats of serious harm to such
17 persons and other persons, the abuse and threatened abuse of
18 law and legal process, and a scheme, plan, and pattern
19 intended to cause such persons to believe that if they did not
20 perform such labor and services, they would suffer serious
21 harm and physical restraint and benefit financially and by
22 receiving one or more things of value from participation in a
23 venture that engaged in such acts, knowing and in reckless
24 disregard of the fact that such venture had engaged in the
25 providing and obtaining of labor and services by any such

1 means.

2 Count 3 of the indictment provides in or about and
3 between January 2010 and November 2016, both dates being
4 approximate and inclusive, within the Eastern District of New
5 York and elsewhere, the defendant Dan Zhong, together with
6 others, did knowingly and intentionally conceal, remove,
7 confiscate, and possess one or more actual and purported
8 passports and other immigration documents of one or more
9 persons in the course of one or more violations of Title 18,
10 United States Code, Section 1589 and Title 18, United States
11 Code, Section 1594(a), with intent to violate Title 18, United
12 States Code, Section 1589, and, to prevent and restrict and to
13 attempt to prevent and restrict without lawful authority one
14 or more persons' liberty to move and travel in order to
15 maintain the labor and services of such persons when such
16 persons were and had been victims of a severe form of
17 trafficking in persons, as defined in section 103 of the
18 Trafficking Victims Protection Act of 2000, to wit, the
19 requirement, harboring, transportation, provision and
20 obtaining of one or more persons for labor and services
21 through the use of force and coercion for the purpose of
22 subjection to debt bondage.

23 Count 4 charges that in or about and between January
24 2010 and November 2016, both dates being approximate and
25 inclusive, within the Eastern District of New York and

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1 elsewhere, the defendant Dan Zhong, together with others,
2 knowingly and in reckless disregard of the fact that one or
3 more aliens had remained in the United States in violation of
4 law, did knowingly and intentionally conspire to transport and
5 move such aliens within the United States by means of
6 transportation, in furtherance of such violation of the law
7 and for the purpose of commercial advantage and private
8 financial gain, contrary to Title 8, United States Code,
9 Sections 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i).

10
11 (Continued on the next page.)
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1 THE COURT: (Cont'g.) The last count of the
2 indictment charges:

3 That in or about and between January 2010 and
4 November 2016, both dates being approximate and inclusive,
5 within the Eastern District of New York and elsewhere, the
6 defendant, Dan Zhong, together with others, did knowingly and
7 intentionally conspire to utter, use, attempt to use, possess,
8 obtain, accept and receive one or more documents prescribed by
9 statute or regulation for entry into, and as evidence of
10 authorized stay and employment in the United States, knowing
11 those documents to have been procured by means or one of or
12 more false claims and statements and otherwise procured by
13 fraud and unlawfully obtained, contrary to Title 18, United
14 States Code Section 1546(a).

15 Now this count also included the following overt
16 acts. The first one is that:

17 On or about December 10, 2014, Landong Wang sent an
18 electronic communication to Dan Zhong in which Wang sought
19 Zhong's assistance to arrange for workers to enter the United
20 States from the People's Republic of China to perform work
21 contrary to the terms of their United States visas.

22 In or about June 2015, Zhong and Landong Wang caused
23 workers to provide contracting work at a residence in Old
24 Brookville, New York, contrary to the terms of their United
25 States visas.

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1 The third overt act:

2 In or about August 2015, Zhong sent an electronic
3 communication to an accessory -- excuse me one second. I
4 think I have a typo.

5 Thank you so much.

6 Okay, all right I'm just going to start that one
7 over. This is the third overt act.

8 In or about August 2015, Zhong sent an electronic
9 communication to Ying Randi Lin concerning of use of workers
10 to provide labor in the United States, contrary to the terms
11 of the United States visas at a residence in Old Brookville,
12 New York.

13 The fourth overt act:

14 In or about September 2015, Zhong and -- sorry --
15 Zhong and Ying Randi Lin exchanged electronic communications
16 concerning the use of workers to provide contracting work at a
17 residence in Flushing, New York, contrary to the terms of
18 their United States visas.

19 In or about October 2015, Zhong and Landong Wang
20 caused workers to provide contracting work at a residence in
21 Fresh Meadows, New York, contrary to the terms of their United
22 States visas.

23 And finally: In or about 2015, Landong Wang
24 possessed workers' passports and visas at a residence in Fresh
25 Meadows, New York.

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1 All right, so those are the counts in the
2 indictment.

3 One of the things that you'll notice is that the
4 indictment charges that conduct occurred on or about certain
5 dates. The government does not have to establish the exact
6 date of an alleged offense. It is enough if the evidence
7 establishes beyond a reasonable doubt that an offense was
8 committed on a date that's reasonably near the dates that are
9 alleged in the indictment.

10 Venue refers to the location of the charged crimes.
11 Each count of the indictment alleges that the crime charged
12 occurred in whole or in part in this judicial district, which
13 is the Eastern District of New York. This district includes
14 Brooklyn, Queens, Staten Island, Nassau and Suffolk counties
15 on Long Island. To establish a venue for a crime in this
16 district, the government must prove that some act in
17 furtherance of the crime happened in the Eastern District.

18 Now, during these instructions you're going to hear
19 me use the words "knowingly" and "intentionally". I will
20 define those terms for you before I talk about the individual
21 charges.

22 A person acts knowingly if he acts purposely and
23 voluntarily, and not because of a mistake, accident, or other
24 innocent reason. Whether the defendant acted knowingly may be
25 proved by the defendant's conduct and by all of the facts and

1 circumstances surrounding the case.

2 A person acts intentionally when he acts
3 deliberately and purposely. To be intentional, the
4 defendant's acts must have been the product of his conscious
5 objective decisions rather than the product of a mistake or
6 accident. You may infer that a person ordinarily intends all
7 of the natural and probable consequences of an act that is
8 done knowingly.

9 A person does not have to be aware of the specific
10 law or rule that his conduct might be violating, but he must
11 act with the specific intent do whatever it is that the law
12 forbids.

13 You will also hear the phrase "reckless disregard"
14 in some of the counts of the indictment. Reckless disregard
15 means to be aware of, but consciously and carelessly ignore
16 facts and circumstances. I'll explain what that phrase means
17 when I instruct you on the crimes that contain that phrase.

18 These issues about knowledge, intent and reckless
19 disregard require you to make a determination about the
20 defendant's state of mind, which is something that can rarely
21 be proved directly. A wise and careful consideration of all
22 the circumstances shown by the evidence and the exhibits in
23 this case may permit you to make the determination about the
24 defendant's state of mind. Indeed, experience has taught that
25 frequently actions speak louder and more clearly than words,

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1 and in your everyday affairs, you are frequently called upon
2 to determine a person's state of mind from his words and
3 actions in a given set of circumstances. That's what you're
4 being asked to do here.

5 Now I'm going to explain the charges against the
6 defendant in a different order than the indictment. I'm going
7 to start with Counts Two and Three. Those charge the
8 defendant with forced labor and concealing passports and
9 immigration documents in connection with forced labor. After
10 I instruct you on Counts Two and Three, I'll define the two
11 additional ways, other than the defendant personally
12 committing the crimes charged in Count Two and Three. That
13 the government can prove the defendant's guilt of the crimes
14 charged in Counts Two and Three.

15 Give me just a minute again.

16 All right. So the other thing I want to talk to you
17 about is aiding and abetting.

18 In addition to charging the defendant with forced
19 labor and conspiracy to conceal immigration documents, the
20 government has charged the defendant with aiding and abetting
21 each of those crimes. So that means the defendant is charged
22 with aiding and abetting the crimes charged in Counts Two and
23 Three.

24 So that means that the defendant's charged with
25 aiding and abetting the crimes that are charged in counts Two

1 and Three.

2 The relevant statute provide this:

3 Whoever commits an offense against the United
4 States, or aid or abets, or counsels, commands, induces or
5 procures its commission, is punishable as a principal; and
6 whoever wilfully causes an act to be done, which if directly
7 performed by him, would be an offense against the United
8 States is punishable as a principal.

9 Under a theory of aiding and abetting, it is not
10 necessary that the government prove that the defendant himself
11 physically committed the crimes of forced labor or concealing
12 immigration documents. A person who aids or abets in order to
13 commit a crime is just as guilty of that crime as if he
14 committed it himself. Accordingly, you may find the defendant
15 guilty of the crimes that are charged in Counts Two or Three,
16 which I am going to define for you, if you find that the
17 government proved beyond a reasonable doubt that another
18 person committed those crimes, and that the defendant aided or
19 abetted that person committing those crimes.

20 The first requirement that the government has to
21 prove that another person committed the act or crimes charged.
22 Nobody can be convicted of aiding or abetting the criminal
23 acts of another person if no crime was committed in the first
24 place. If you do find that a crime was committed, then you
25 have to consider whether the defendant aided or abetted the

1 commission of that crime.

2 In order to be an aider or an abettor, it is
3 necessary that the defendant knowingly associated himself in
4 some way with the crime, and that he knowingly tried to help
5 make the crime succeed with some action.

6 To establish that the defendant knowingly associated
7 himself with crimes charged in Count Two and Three, the
8 government must prove beyond a reasonable doubt that the
9 defendant knew that the crime was being committed. To
10 establish that the defendant participated in the commission of
11 a crime, the government must also prove that the defendant
12 engaged in some affirmative conduct or overt act in order to
13 accomplish that crime. It is not sufficient for the
14 government to show that the defendant was present where a
15 crime was committed, that he knew a crime was committed, or
16 merely associated with other people who committed the crime.
17 They must show that the defendant took some action that was
18 intended to help accomplish the crime.

19 Similarly, someone who has no knowledge that a crime
20 is being committed, or is about to be committed but
21 inadvertently does something that aids in the commission of
22 the crime, is not an aider and an abettor; both knowledge and
23 action are required. An aider and abettor must know -- an
24 aider and an abettor must know that the crime is being
25 committed and act in a way that is intended to accomplish the

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1 crime.

2 To determine whether the defendant aided and abetted
3 the crimes that are charged in Count Two Or Three, ask
4 yourself these questions:

5 Did he participate and intend to participate in the
6 crime?

7 Did he knowingly associate himself with the criminal
8 venture?

9 Did he act in a way that was intended to help
10 accomplish the crime?

11 If you find that the defendant in each of these
12 three things, the defendant would be an aider and abettor and,
13 therefore, guilty of the offense. On other hand if your
14 answer to these questions is "no", then the defendant would
15 not be an aider and abettor and you must find him not guilty
16 under that theory.

17 The second concept that you should have -- the
18 second way that you should evaluate the defendant's guilt or
19 possible guilt for Counts Two and Three -- and Count Two is
20 providing and obtaining forced labor, and Count Three is
21 concealing or withholding passports in connection with forced
22 labor -- even if you do not find that the defendant personally
23 committed all of the acts that constitute the element of those
24 counts.

25 If you find beyond a reasonable doubt that the

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1 defendant was a member of a conspiracy that's charged in Count
2 One, which I'm also going to charge you on, you may also but
3 are not required to find the defendant guilt of the
4 substantive crimes that are charged in Counts Two and Three
5 if, you find beyond a reasonable doubt, each of the following
6 elements:

7 First, that the crime charged in Count Two Or Three
8 was committed.

9 Second, that the person or persons that you find
10 actually committed the crime were members of the conspiracy
11 that you decided existed.

12 Third, that the substantive crime was committed
13 pursuant to the common plan and understanding among the
14 conspirators.

15 Fourth, that the defendant was a member of the
16 conspiracy at the time the crime was committed.

17 And fifth, that the defendant could have reasonably
18 foreseen that the substantive crime might be committed by his
19 coconspirators.

20 If you find all five of these elements to exist
21 beyond a reasonable doubt, then you may find the defendant
22 guilty of the substantive crime that you're considering, even
23 though he didn't personally participate in the crime or have
24 knowledge of every aspect of it. The reason for this the rule
25 is simply that a coconspirator who commits a substantive crime

1 pursuant to a conspiracy is deemed to act on behalf of all of
2 the other conspirators; therefore, all coconspirators bear
3 criminal responsibility for the substantive crimes within
4 their conspiracy. If you are not satisfied about any of these
5 five elements, then you may not find the defendant guilty of
6 the substantive crimes in Counts Two Or Three, unless the
7 government proves beyond a reasonable doubt that the defendant
8 personally committed or aided and abetted in the commission of
9 the substantive crime.

10 So now we'll turn to Count Two, that I told you I'm
11 going out of order, because I think it makes a little more
12 sense.

13 All right, I think easier to understand the law that
14 applies if I talk to you about the substantive counts that
15 are -- the substantive charges that are in Counts Two Or
16 Three, and then explain Count One, which charges the defendant
17 with conspiracy to commit forced labor.

18 Count Two charges the defendant with forced labor
19 and is the substantive charge for Count One. Count One
20 alleges the conspiracy to commit forced labor while Count Two
21 alleges what we call a substantive forced labor charge.

22 The forced labor statute, which is Title 18, United
23 States, Code Section 1589, provides in relevant part:

24 Whoever knowingly provides or obtains the labor or
25 services of a person by any one of the, or by any combination

1 of following means:

2 1, by means of physical restraint against that
3 person or another person;

4 By means of serious harm or threats of serious harm
5 to that person or another person;

6 By the means of the abuse or threatened abuse of law
7 or legal process;

8 By means of any scheme, plan, or pattern intended to
9 cause the person to believe that if such person did not
10 perform such labor and services, that person or another person
11 would suffer serious harm or physical restraint has committed
12 a crime.

13 B, whoever knowingly benefits, financially or by
14 receiving anything of value from participating in a venture
15 which has engaged in the providing or obtaining of labor or
16 services by any of the means described in subsection (a),
17 knowingly or in reckless disregard of the fact that the
18 venture has engaged in the providing or obtaining of labor or
19 service the by any such means has committed a crime.

20 Count Two charges, as I told you before, that the
21 defendant committed forced labor in two different ways:

22 By knowingly providing or obtaining services --
23 sorry. By knowingly providing or obtaining labor or services
24 by prohibited means, or by knowingly benefiting from
25 participating in a venture that he knew or recklessly

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1 disregarded was engaged in providing or obtaining forced labor
2 services or services by prohibited means.

3 I'm going to explain both of these theories of
4 forced labor.

5 The first theory on forced labor.

6 Under the first theory, in order to find a defendant
7 guilty, you must find that the government has proven each of
8 the following three elements beyond a reasonable doubt.

9 First, that the defendant obtained the labor or
10 services of another person;

11 Second, that the defendant did so through one of the
12 following prohibited means;

13 A, through physical restraint against a person or
14 another person;

15 B, through serious harm or threats of serious harm
16 to the person or any other person;

17 Through abuse or threatened abuse of law or legal
18 process or -- that was C;

19 And then D, through a scheme, plan, pattern intended
20 to cause the person to believe that if he did not perform such
21 labor or services, could result in serious harm to or physical
22 restraint against that person or any other person and;

23 Third, that the defendant acted knowingly.

24 The first element: Obtaining labor or services.

25 In considering this first element, you must decide

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1 whether the defendant obtained the labor or services of
2 another person. The term "obtain" means gain or acquire.
3 "Labor" means the expenditure of physical or mental effort.
4 "Services" means conduct or performance that assists or
5 benefits someone. If you find that the government has proven
6 beyond a reasonable doubt that the defendant obtained the
7 labor or services of another person, then the first element
8 has been satisfied.

9 The second element is prohibited means.

10 If you find that the defendant obtained the labor or
11 services of the alleged victims, then you must determine
12 whether the defendant did so through one of the four
13 prohibited means; that is, through (1), forced or physical
14 restraint or threatening to do either to the person or to
15 another person, (2), serious harm or threats of serious harm
16 to the person or another person, (3), abuse or threatened
17 abuse of the law or legal process, or (4), a scheme, plan, or
18 pattern intended to cause the person to believe that serious
19 harm would result if he did not perform the labor or services
20 required of him. Before you can find that the second element
21 has been satisfied, you must find beyond a reasonable doubt
22 that one of those prohibited means that I just talked to you
23 about was used to obtain the alleged victim's labor or
24 services.

25 I'm going to define for you some of the terms that

1 you will consider in determining whether this second element
2 of Count Two has been satisfied.

3 "Physical restraint". That means being confined by
4 being tied, bound, or locked up.

5 A "threat" is a serious statement expressing an
6 intention to inflict harm, at once or in the future, and which
7 is different from idle or careless talk exaggeration or
8 something that is said in a joking manner. For a statement to
9 be a threat, the statement must have been made under such
10 circumstances that a reasonable person who heard or read the
11 statement would understand it as a serious expression of an
12 intent to cause harm. In addition, the statement must have
13 been made with the intent that it be a threat, or with the
14 knowledge that the statement would be viewed as a threat.

15 The term "serious harm" includes both physical and
16 nonphysical types of harm. It can include psychological,
17 financial, or reputational harm. Therefore, a threat of
18 serious harm does not have to involve any threat of physical
19 convenience. However, the threats must have serious enough
20 that, considering all of the surrounding circumstances, a
21 reasonable person of the same background and in the same
22 circumstances as the alleged victim would perform or continue
23 performing labor that the victim would otherwise not have
24 willing performed in order to avoid the harm.

25 It is for you to determine whether any statements

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1 made or threats, as I just defined them, in considering
2 whether a threat of harm is sufficient to compel or coerce an
3 alleged victim's services, you may consider the totality of a
4 defendant's conduct as well as the victim's age, background or
5 circumstances that were known to the defendant and would make
6 the victim -- the alleged victim especially vulnerable to
7 pressure.

8 You may consider overt threats that the defendant
9 might have made to place the alleged victims in fear. You may
10 also consider, if you do so find, other surrounding
11 circumstances, such as verbal abuse and insults, isolation,
12 poor working and living conditions, denial of adequate rest,
13 food and medical care, pay withholding, or any combination of
14 these conditions and any other techniques that you find that
15 the defendant might have used to intimidate victims and compel
16 them to work. If you find that any of the four prohibited
17 means that I mentioned earlier was used, you must then
18 determine whether their use caused any victim reasonably to
19 believe that he had no choice but to work or remain working
20 for the defendant.

21 The term "abuse or threat end abuse of law or legal
22 process", means the use or threatened use of law or legal
23 process, whether it's administrative, civil or criminal, in
24 any manner or for any purpose for which the law was not
25 designed in order to exert pressure of another person to cause

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1 that person to take some action or to refrain from taking
2 action.

3 You should give the words "scheme, plan and pattern"
4 their ordinary meanings. A "scheme" is a plan or program of
5 action, especially a crafty or secret one. A "plan" is a
6 method for achieving an end or a detailed formulation of
7 program of actions. A "pattern" is a mode of behavior or
8 series of acts that are recognizably consistent.

9 A few final things about the second element of
10 forced labor:

11 To prove forced labor, the government does not need
12 to link each of the threats allegedly made or actions
13 allegedly taken against a victim to a particular labor task
14 that that victim performed. If a victim was threatened with
15 or suffered serious harm or physical restraint, as I've
16 defined them, either as punishment or as part of a climate of
17 fear that overcame his will and compelled his service, that is
18 sufficient to establish the second element of the offense of
19 forced labor.

20 If you find that the victim was threatened with
21 serious harm, the government does not have to prove physical
22 restraint, such as use of chains or locked doors, in order to
23 establish the offense of forced labor. The fact that a victim
24 might have had the opportunity to escape is irrelevant if the
25 defendant placed the victim in such fear or circumstances that

1 the victim reasonably believed that he could not leave. A
2 victim who has been placed in such fear or circumstances is
3 under no affirmative duty to try to escape.

4 You may consider any condition that made each victim
5 vulnerable to pressure, as long as you believe that the
6 defendant also knew about it. You may find that not all
7 people have the same courage or firmness. You may consider,
8 for example, the background, physical and mental condition,
9 experience, education, socioeconomic status and any
10 inequalities between the victims and the defendant, but only
11 if these conditions were known to the defendant at the time.
12 Simply put, you may ask whether the alleged victims were
13 vulnerable in some way known to the defendant so that the
14 defendant's actions, even if not sufficient to compel another
15 person to work or enough to compel the victims to work.

16 Finally, in considering whether service performed by
17 someone was voluntary, you should keep in mind that it is not
18 the defense to the crime of forced labor that the person might
19 have initially agreed voluntarily to render the services or to
20 perform the work. If a person willfully begins work but later
21 wants to stop and then is forced to keep working against his
22 will by threats of serious -- serious harm or physical
23 restraint, or by a scheme, plan or pattern intended to cause
24 him to believe that stopping will result in serious harm or
25 physical restraint to him or another person, then the service

1 becomes involuntary.

2 Also, the fact that a person is paid a salary or a
3 wage is not determinative of whether that person has been held
4 in forced labor. In other words, if a person is compelled to
5 labor against his will by any one of the four means I told you
6 about earlier, his labor is involuntary, even if he is paid or
7 compensated for the work.

8 The third element of forced labor is the defendant
9 must have acted knowingly. I previously instructed you on
10 knowledge and reckless disregard, and those definitions should
11 apply here.

12 A person acts knowingly if he acts voluntarily and
13 intentionally not because of mistake, accident or other
14 innocent reason. The person does not have to know the
15 specific law that he might be violating, but that person must
16 act with specific intent to do the illegal action.

17 Okay, the second theory on forced labor.

18 Under this theory, you may consider whether the
19 government has proved each of the following three elements
20 beyond a reasonable doubt.

21 First, that the defendant knowingly benefited
22 financially or by receiving anything of value from
23 participating in the venture.

24 Second, that the venture was engaged in providing or
25 obtaining labor or services through any one or any combination

1 of the prohibited means that I've previously identified.

2 And third, that the defendant knew or recklessly
3 disregarded the fact that the venture it was engaged in
4 providing or obtaining labor or services by any of the these
5 prohibited means.

6 Under the second theory of forced labor, the
7 government does not need to prove that the defendant himself
8 engaged in providing or obtaining the labor or services of a
9 person. The government need only prove that there was a
10 venture that engaged in one of the prohibited means, that the
11 defendant knew or recklessly disregarded the fact that the
12 venture was involved in forced labor, and that he knowingly
13 participated in some way and benefited financially or by
14 receiving a thing of value from that venture.

15 How's everybody doing, okay? Good. Okay.

16 As to the first element: A venture is two or more
17 persons associated in fact, whether or not their association
18 forms a legal entity. It is sufficient to find that the
19 defendant played any role in the venture, even if that role
20 was minor, and even if that role was not related to actually
21 obtaining of person's labor or services. In order to be found
22 guilty, the defendant needs to have knowingly benefited
23 financially or received something of value from participating
24 in the venture. I instructed you on the definition of
25 knowingly and you should apply that instruction here.

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1 The second element is prohibited means, and I
2 already instructed you on those four prohibited means of
3 providing or obtaining labor or services, and you should apply
4 those instructions here.

5 The third element the government must prove beyond a
6 reasonable doubt that the defendant knew or recklessly
7 disregarded the fact that the venture was providing or
8 obtaining labor or services by any of the prohibited means I
9 previously -- let's see, oh, sorry. I'm just going to start
10 over again.

11 With regard to the third element, the government
12 must prove beyond a reasonable doubt that the defendant knew
13 or recklessly disregarded the fact that the venture was
14 providing or obtaining labor or services by any of those four
15 prohibited means. I instructed you on knowledge and reckless
16 disregard, and you should apply those definitions here.

17 So if you find that the government has met its
18 burden of proving beyond a reasonable doubt each of the three
19 elements of forced labor under the second theory, then you
20 will have concluded that defendant committed forced labor.
21 The government does not have to prove both of those theories;
22 however, the government does have to prove every element under
23 either the first theory or every element under the second
24 theory beyond a reasonable doubt in order to prove the
25 defendant's guilt. If you make this finding, then you should

1 convict the defendant on Count Two. However, if the
2 government fails to prove any element of a theory beyond a
3 reasonable doubt, then you cannot find the defendant guilty
4 under that theory of forced labor.

5 The third count is concealing passports and
6 immigration documents in connection with forced labor in
7 violation of Title 18, United States Code, Section 1592.

8 The relevant part of the statute provide that:

9 Whoever knowingly destroys, conceals, removes,
10 confiscates or possesses any actual or purported passport or
11 other immigration document or other actual or purported
12 government identification document of another person in the
13 course of a violation of the forced labor statute with intent
14 to violate the forced labor statute, or to prevent or
15 restrict, or attempt to prevent or restrict without lawful
16 authority, the person's liberty to move or travel in order to
17 maintain the labor and services of that person, or the person
18 has been a victim of a severe form of trafficking in persons,
19 has committed a crime.

20 In order to prove a violation of this section, the
21 government must prove the following three elements beyond a
22 reasonable doubt:

23 First, that the defendant concealed, removed,
24 confiscated or possessed an actual or purported passport,
25 visa, or other identification document of another person:

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1 Second, that the defendant did so in connection with
2 violating the forced labor statute, or with intent to violate
3 the forced labor statute, or unlawfully prevent or restrict,
4 or to attempt or prevent or restrict a person's liberty to
5 move or travel in order to maintain the labor and services of
6 that person, when the person is or has been the victim of a
7 severe form of trafficking in person, and third;

8 That the defendant acted knowingly. I'm going to
9 give a little bit more detailed discussion of each of those
10 element.

11 The first element that the government must prove
12 beyond a reasonable doubt is that the defendant concealed,
13 removed, confiscated or possessed an actual or purported
14 passport, immigration document, or other government
15 identification document of another person.

16 The word "conceal" means the act of refraining from
17 disclosure or preventing the discovery of the document, or of
18 hiding the document. To "remove" means to take away or
19 transfer from one place to another. To "confiscate" means to
20 appropriate or seize the document. To "possess" means to hold
21 and have actual control of the document.

22 The second element requires that the government
23 prove the defendant engaged in the concealment, removal,
24 confiscation or possession of the document either in the
25 course of violating the forced labor statute; or with intent

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1 to commit forced labor, or to prevent or restrict, or attempt
2 to prevent or restrict without lawful authority the person's
3 liberty to move or travel in order to maintain the labor or
4 services of that person when the person is or has been the
5 victim of a severe form of trafficking in person.

6 In other words, the government must prove beyond a
7 reasonable doubt that the defendant did any of these acts
8 while violating the forced labor statute, or with the intent
9 to violate that statute. When considering whether the
10 defendant concealed, removed, confiscated or possessed the
11 passports in the course of a forced labor event, you should
12 consider the instructions that I gave you previously on the
13 elements of forced labor. When considering whether the
14 defendant acted with the intent to violate the forced labor
15 statute, I instruct you that the government does not have to
16 proof an actual violation of forced labor statute to prove
17 this element beyond a reasonable doubt. Even if the defendant
18 does not succeed in committing forced labor, it is enough for
19 the element -- for the second element of Count Three if you
20 find that the defendant acted with the intent to violate the
21 forced labor statute.

22 "A severe form of trafficking in persons," means the
23 recruitment, harboring, transportation, provision or obtaining
24 of a person for labor or services through the use of force,
25 fraud, coercion for the purpose of involuntary servitude,

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1 peonage, debt bondage or slavery.

2 "Peonage" means holding a victim in involuntary
3 servitude for the purpose of repaying a debt. It does not
4 matter if the debt was legally enforceable.

5 "Debt bondage" means the status or condition of a
6 debtor arising from a pledge by the debtor of his personal
7 services or those of a person under his control as security
8 for a debt, if the value of those services as reasonably
9 assessed is not applied toward the liquidation of the debt or
10 the length and nature of those services are not respectively
11 limited and defined.

12 The third and final element of Count Three, is the
13 defendant acted knowingly and intentionally.

14 I've instructed you on these before, but I'm going
15 to remind you of the definitions now.

16 A person acts knowingly if he acts voluntarily and
17 intentionally and not because of negligence, accident or other
18 innocent reason or mistake. A person acts intentionally if he
19 acts deliberately and purposefully with the specific intent to
20 do something illegal. The person does not have to know the
21 specific law might that he violating, but the person must act
22 with the specific intent to do the illegal action.

23 In conclusion on Count Three, if you find the
24 defendant has met its burden of proving each of the three
25 elements I just described --

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1 MR. CLEARY: Excuse me, Your Honor, that would be
2 the government.

3 THE COURT: Oh, my gosh. Sorry about that.

4 Let's start over again.

5 In conclusion on Count Three, if you find that the
6 government has met its burden of proving each of the three
7 elements that I've just described beyond a reasonable doubt,
8 then you will have concluded that the defendant has committed
9 the crime of concealing passports and information documents in
10 connection with forced labor, and you should find him guilty
11 of this charge. But if you find that the government fails to
12 prove any of these three elements beyond a reasonable doubt,
13 then you must acquit of defendant of Count Three.

14 I did misspeak, the defendant has no burden of proof
15 at all in this regard. Slip of tongue. It's the government
16 that has the burden.

17 All right, now I'm going to go back to Count One,
18 which is conspiracy to commit forced labor.

19 This Count charges the defendant with knowingly and
20 intentionally conspiring to commit the crime of forced labor.
21 Since some of the other counts in the indictment also included
22 a charge of conspiracy to violate other federal laws, pay
23 attention -- I know you're paying careful attention to
24 everything -- but I'm going to explain to you what a
25 conspiracy is.

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1 A conspiracy is a kind of criminal partnership.
2 It's an agreement between two or more people to join together
3 to accomplish an unlawful purpose. The essence of the crime
4 of conspiracy is an agreement or understanding to violate
5 other laws. A conspiracy is punishable as a crime, even if it
6 does not achieve its purpose.

7 The crime of conspiracy to violate a federal law is
8 a separate and distinct crime from any offense that might have
9 been committed pursuant to the conspiracy. That is because
10 the formation of a conspiracy or a partnership for criminal
11 purposes is in and of itself a crime. It is separate and
12 distinct from the actual violation of any specific federal
13 law, such as the forced labor statute, which is called a
14 substantive crime. That means you may find the defendant
15 guilty of the crime of conspiracy even though he might not
16 have committed the substantive crime that was the object of
17 the conspiracy.

18 The first count of the indictment charges that the
19 defendant, together with others, conspired to commit forced
20 labor. To prove the crime of conspiracy charged in Count One,
21 the government must establish each one of the following two
22 elements beyond a reasonable doubt:

23 First, that two or more persons knowingly and
24 intentionally and entered into an agreement to commit forced
25 labor and;

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1 Second, that the defendant knowingly and
2 intentionally became a member of the conspiracy.

3 The government must prove beyond a reasonable doubt
4 that the purpose of the conspiracy in this case was to commit
5 the crime of forced labor, and that the defendant knowingly
6 and intentionally joined that conspiracy. If you find that
7 the government has proven each of these two elements beyond a
8 reasonable doubt, then you must find the defendant guilty of
9 Count One. On the other hand, if you find that the government
10 has not proven either of these elements beyond a reasonable
11 doubt, then you must find the defendant not guilty.

12 The first element of this charge is the existence of
13 an agreement.

14 The government must prove beyond a reasonable doubt
15 that two or more people entered into an agreement to commit
16 forced labor, which is the object of a conspiracy. One person
17 cannot commit a conspiracy alone. The proof must convince you
18 that at least two people joined together in a common criminal
19 scheme. The government does not have to prove that members of
20 the conspiracy met together or entered into any express or
21 formal agreement like a contract. You do not have to find
22 that the alleged conspirators stated in words, or in writing,
23 what the scheme was, its object or purpose, or that the means
24 by which the scheme was to be accomplished. Indeed, common
25 sense would suggest that when people do, in fact, undertake to

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1 enter a conspiracy, much is left to an unexpressed
2 understanding. What the government must show is the
3 conspirators came to a mutual understanding to cooperate
4 together to accomplish an unlawful act by means of a joint
5 plan or a common design.

6 The existence of an agreement to violate the law may
7 be established by direct evidence or by circumstantial
8 evidence. You may infer the existence of a conspiracy from
9 the circumstances in the case and the conduct of the parties
10 involved. However, because a conspiracy may be secret by its
11 very nature, there may not be direct proof of its existence.
12 In the context of conspiracy cases, actions may speak louder
13 than words. You may consider the actions and statements of
14 all of those you find to be participants as proof that a
15 conspiracy existed.

16 If all of these evidence, direct and circumstantial,
17 establishes that the government proved beyond a reasonable
18 doubt that the minds of at least two of the alleged
19 conspirators, one of whom was the defendant, came to an
20 understanding and agreed to work together to accomplish the
21 object of the charged conspiracy, then the first element, the
22 existence of a conspiracy, has been established.

23 The second element is knowing membership in a
24 conspiracy.

25 If you conclude that the government has proved

1 beyond a reasonable doubt that a conspiracy existed, then you
2 must next consider the second element: Whether the defendant
3 knowingly and intentionally participated in the conspiracy.

4 I've instructed several times about what knowingly
5 and intentionally means and you should follow those
6 instructions here. A person acts knowingly and intentionally
7 if he acts voluntarily, deliberately and purposefully and not
8 because of ignorance, mistakes, accident or carelessness. In
9 other words, did the defendant join the conspiracy with an
10 awareness of at least some of the basic gains and purposes of
11 the unlawful agreement, and did the defendant participate in
12 the conspiracy with the intention of furthering its goals.

13 The defendant's knowledge is something that you may
14 infer from the proven facts. To become a member of the
15 conspiracy, the defendant did not have to know the identities
16 of every member of the conspiracy, nor did he have to know all
17 their activities. Moreover, the defendant did not have to be
18 fully informed about the details or scope of the conspiracy in
19 order for you to infer that he knowingly participated.

20 A defendant can join a conspiracy at any time that
21 the conspiracy was operating. The defendant did not have to
22 join a conspiracy at the beginning. A conspiracy, once
23 formed, is presumed to continue either until its objectives
24 are accomplished or there is some affirmative act of
25 termination by its members. Once a person is found to be a

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1 member of a conspiracy, he is presumed to continue his
2 membership in the conspiracy until it is finished, unless it
3 is shown by some affirmative proof that he withdrew and
4 disassociated himself from it.

5 In addition, the extent of a defendant's
6 participation has no bearing on the issue of a defendant's
7 guilt. A conspirator's liability is not measured by the
8 extent or duration of his participation. Some conspirators
9 play minor -- sorry, some conspirators play major roles while
10 others play minor roles.

11 I want to caution you, though, that the defendant's
12 mere presence at the scene of an alleged crime does not, by
13 itself, make him a member of a conspiracy. Similarly, mere
14 association with one or more members of the conspiracy does
15 not automatically make the defendant a member. A person may
16 know or be friendly with a criminal without being a criminal
17 himself.

18
19 (Continued on next page.)

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21
22
23
24
25

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1 THE COURT: (Cont'g.) The fact they have may have
2 been together and discussed common interests does not
3 necessarily establish proof that the conspiracy existed or
4 knowing membership in the conspiracy.

5 A defendant's participation in the conspiracy must
6 be established by independent evidence of his own acts or
7 statements, as well as those of the other alleged
8 coconspirators, and the reasonable inferences that may be
9 drawn from them.

10 I further caution you that mere knowledge or
11 acquiescence without participating in the unlawful plan, is
12 not sufficient. Moreover, a fact that a defendant's acts
13 without his knowledge merely happen to further the purposes of
14 the object -- or objectives of the conspiracy does not make
15 the defendant a member. More is required under the law.

16 What is required is that a defendant must have
17 participated with knowledge of at least some of the purposes
18 or objectives of the conspiracy and with the intention of
19 helping achieve its unlawful ends. If you find that the
20 government proved beyond a reasonable doubt that the defendant
21 knowingly participated in a conspiracy to commit forced labor,
22 then the government has met its burden on this second element.

23 Okay. This is the fourth count, which is alien
24 smuggling conspiracy. This charges the defendant with
25 conspiracy to engage in alien smuggling. The relevant statute

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1 provides, in pertinent part, that any person who knowing or in
2 reckless disregard of the fact that an alien has come to,
3 entered, or remains in the United States in violation of law,
4 transported or moves or attempts to transport or move such
5 alien within the United States by means of transportation or
6 otherwise in furtherance of such violation of law or conspires
7 to do the same has committed a crime.

8 The defendant is charged with conspiring to engage
9 in alien smuggling. I have already given you the instruction,
10 general definition of conspiracy. That's the agreement among
11 two or more people to commit a crime. The crime of conspiracy
12 to violate a federal law is a separate offense from the
13 underlying crime.

14 It is a separate and distinct -- it is separate and
15 distinct from an actual violation of alien smuggling, which is
16 the object of the conspiracy and what we call a substantive
17 crime.

18 In order to find the defendant guilty of conspiracy
19 to commit alien smuggling, you must find that two or more
20 people agreed to commit the crime of alien smuggling, and the
21 defendant knowingly and intentionally became a member of the
22 conspiracy. Here are the elements of alien smuggling.

23 First, that the alien workers were in the United
24 States in violation of the law.

25 Second, that the defendant or a coconspirator knew

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1 or acted in reckless disregard of the fact that the alien
2 workers remained in the United States in violation of the law.

3 Third, that the defendant or a coconspirator
4 transported the alien workers within the United States.

5 And, fourth, that the defendant or a coconspirator
6 acted willfully to further the alien workers' illegal presence
7 in the United States.

8 The first element is that an alien was, in fact, an
9 alien at the time of the offense alleged in the indictment.
10 An alien is a person who is not a natural born or naturalized
11 citizen or a national of the United States. A national of the
12 United States is someone who is born in a United States
13 territory.

14 Under the agreement between the United States of
15 America and the People's Republic of China, on the conditions
16 of construction of new embassy complexes in Washington and
17 Beijing, that's referred to as COCA, Chinese workers for a
18 private construction company can be admitted to the United
19 States under diplomatic visas for the purpose of performing
20 work on an approved construction projects on Chinese
21 government diplomatic facilities in the United States.

22 Working on other projects or remaining in the United
23 States after their work is done is a violation of the
24 conditions of those visas. In other words, an alien who is
25 admitted to the United States under a diplomatic visa for the

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1 purpose of performing certain construction work, but who works
2 on nonapproved construction projects or stays here after their
3 work is done is in the United States illegally.

4 The second element is knowledge or disregard of the
5 facts -- of the fact that an alien remained in the United
6 States in violation of the law. In other words, to be guilty
7 of alien smuggling conspiracy, the defendant must have known
8 that the alien workers that he or his coconspirators
9 transported were aliens who were in the United States
10 illegally, or they must have acted with reckless disregard of
11 the facts about their status.

12 I instructed you before on knowledge. Apply that
13 instruction here. And just as a reminder, reckless disregard
14 means deliberate indifference to facts, that if considered and
15 weighed in reasonable manner, indicate the highest probability
16 that the alleged alien was, in fact, an alien, and was in the
17 United States unlawfully.

18 Said another way, reckless disregard means to be
19 aware of but consciously and carelessly ignore facts and
20 circumstances, clearly indicating that a person transported
21 was an alien who entered and remained in the United States
22 illegally.

23 The third element is transportation of an alien who
24 is in the United States unlawfully. That does not mean
25 transporting a person from China to the United States, but

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1 means transporting an alien who's already present here within
2 the United States.

3 The fourth element is willful conduct in furtherance
4 of the alien's illegal presence in the United States. The
5 evidence must show a direct and substantial relationship
6 between the transportation and furthering the aliens' unlawful
7 presence in the United States.

8 If the transportation of illegal aliens is merely
9 incidental to the aliens' presence in the United States, it is
10 not a violation of the law. The transportation is illegal
11 only when it is in furtherance of the aliens' unlawful
12 presence. Transportation is in furtherance of the aliens'
13 unlawful presence when the transportation advanced or assisted
14 the aliens' illegal presence.

15 In determining whether there is direct -- whether
16 there was a direct and substantial relationship between the
17 transportation and furthering the aliens' unlawful presence in
18 the United States, you should consider all of the relevant
19 evidence, including the time of the transportation, place,
20 distance of the transportation, and the overall impact of the
21 transportation.

22 To conclude, if you find that the government proved
23 beyond a reasonable doubt that the defendant knowingly and
24 intentionally agreed with others to commit the crime of alien
25 smuggling, then you should find the defendant guilty of

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1 Count 4.

2 As I have already instructed you, a conspiracy is a
3 crime even if it does not achieve its purpose. The government
4 does not have to prove that the defendant or his
5 coconspirators actually committed the crime of alien
6 smuggling. What the government must prove is that the
7 defendant voluntarily entered a conspiracy whose purpose was
8 to commit alien smuggling.

9 If you find the defendant guilty of Count 4, you
10 then have to decide whether he acted for the purpose of
11 commercial advantage or private financial gain. The phrase
12 commercial advantage or private financial gain should be given
13 its ordinary and natural meaning. Commercial advantage is a
14 profit or gain in money or property obtained through business
15 activity. Private financial gain is a profit or gain in money
16 or property specifically for a particular person or group.
17 There is no requirement that the defendant actually received
18 some financial gain, however, you may consider any evidence
19 that the defendant did or did not receive financial gain in
20 deciding whether he acted for the purpose of achieving
21 financial gain.

22 The final count is visa fraud conspiracy. This
23 count charges the defendant with conspiracy to engage in visa
24 fraud. The relevant statute is Title 18, United States Code,
25 Section 1546(a), which provides that any person who utters,

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1 uses, attempts to use, possesses, obtains, accepts, or
2 receives any visa permit, border crossing card, alien
3 registration receipt card, or other document prescribed by
4 statute or regulation, for entry into or as evidence of
5 authorized stay or employment in the United States, knowing it
6 to have been procured by means of any false claim or
7 statement, or to have been otherwise procured by fraud or
8 unlawfully obtained or conspired to do the same has committed
9 a crime.

10 I have already instructed you on conspiracy law.
11 That applies here, as does the general definition of
12 conspiracy, which is an agreement among two or more people to
13 commit a crime. Here, the defendant is charged with agreeing
14 with others to commit visa fraud. Here are the elements for
15 the crime of visa fraud.

16 First, the defendant or his coconspirators uttered,
17 used, attempted to use, possessed, obtained, accepted or
18 received a document that was procured by means of a false
19 statement, or by fraud, or was unlawfully obtained.

20 Second, that the document was a nonimmigrant visa.

21 And, third, that at the time the document was
22 uttered or used or attempted to be used, possessed, obtained,
23 accepted, or received, that the defendant or his
24 coconspirators knew that the document was procured by means of
25 a false statement or by fraud or was unlawfully obtained.

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1 The first element is that the person uttered, used,
2 attempted to use, possessed, obtained, accepted or received a
3 document that was procured by means of a false statement, or
4 fraud, or was unlawfully obtained.

5 To utter a document means to use the document by
6 means of a fraudulent representation that is as genuine. To
7 use or attempt to use means to present the document to
8 immigration officers in an attempt to enter the United States.
9 A statement is false if it was untrue when made.

10 For a document to be procured by means of a false
11 statement or fraud, the false statement must have been
12 material. A misrepresentation is material if has a natural
13 tendency to influence or is capable of influencing the
14 decision of the decision making body to which it is addressed.

15 It is not sufficient that an individual simply made
16 any false statement. To constitute visa fraud, an individual
17 must have made a false statement that would tend to influence
18 or was capable of influencing the United States Department of
19 State's decision to issue a visa. However, the false
20 statement need not have actually influenced the Department of
21 State's decision or had any actual effect, but it must have
22 been capable of doing so.

23 The second element is that the document in question
24 was a nonimmigrant visa.

25 The third element is that at the time the defendant

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1 uttered or used or attempted to use or possessed or obtained
2 or accepted or received the document, the defendant or his
3 coconspirators knew that it was procured by means of a false
4 statement or by fraud or was unlawfully obtained.

5 I have already explained to you what knowledge means
6 and that applies here as well.

7 Acting knowingly means to act intentionally and
8 voluntarily.

9 The visa fraud conspiracy that's charged in Count 5
10 requires proof of at least one overt act for the purpose of
11 carrying out the conspiracy. An overt act is any action
12 intended to help the object of the conspiracy, which in this
13 charge is uttering, using, possessing, obtaining, accepting or
14 receiving of nonimmigrant visas that were known to be procured
15 through false statement or fraud or other unlawful means.

16 An overt act does not have to be a criminal act, but
17 it must contribute to advancing the goals of the conspiracy.
18 The government does not have to prove that all overt acts
19 alleged in the indictment occurred, or that any overt act was
20 committed at precisely the time alleged in the indictment. It
21 is sufficient for the government to prove beyond a reasonable
22 doubt that the overt act occurred at or about the time and
23 place stated. You also do not have to find that the defendant
24 himself committed the overt act. It is sufficient for the
25 government to show that one conspirator knowingly committed an

JURY CHARGE

2195

1 overt act in furtherance of the conspiracy, since in the eyes
2 of the law, such an act becomes the act of all members of the
3 conspiracy.

4 If you find that the defendant agreed to enter into
5 an unlawful agreement, to commit visa fraud, you must also
6 determine whether one of the members of the conspiracy
7 knowingly committed at least one overt act and that the overt
8 act was committed to further the goal of the conspiracy. You
9 may only find the defendant guilty of this count if you find
10 that the government has satisfied the overt act required
11 beyond a reasonable doubt.

12 Here are the indictments -- the overt acts that are
13 charged in the indictment.

14 On or about December 10 of 2014, Landong Wang sent
15 an electronic communication to Dan Zhong in which Wang sought
16 Zhong's assistance to arrange for workers to enter the United
17 States from the People's Republic of China to perform work
18 contrary to the terms of the United States visas -- of their
19 United States visas.

20 The second overt act. In or about June 2015, Zhong
21 and Wang caused workers to provide contracting work at a
22 residence in Old Brookville, New York, contrary to the terms
23 of their United States visas.

24 Third overt act. In or about August 2015, Zhong
25 sent an electronic communication to Ying Randi Lin, concerning

1 the use of workers to provide labor in the United States,
2 contrary to the term of their United States visas, at a
3 residence in Old Brookville, New York.

4 I think we are onto the fourth one now.

5 In or about September 2015, Zhong and Ying Randi Lin
6 exchanged electronic communications concerning the use of
7 workers to provide contracting work at a residence in
8 Flushing, New York, contrary to the terms of their United
9 States visas.

10 The next overt act. In or about October 2015, Zhong
11 and Wang caused workers to provide contracting work at a
12 residence in Fresh Meadows, New York, contrary to the terms of
13 their United States visas.

14 And the final overt act, in or about October 2015,
15 Landong Wang possessed workers' passports and visas at a
16 residence in Fresh Meadows, New York.

17 You must consider whether any overt act in
18 furtherance of the crime occurred within the Eastern District
19 of New York. As a reminder, the Eastern District of New York
20 encompasses Kings County, Nassau County, Queens County,
21 Richmond County, which is Staten Island, Suffolk County, and
22 along with the Southern District of New York, the waters
23 within the counties of the Bronx and New York.

24 In this regard, it is enough to satisfy this element
25 if any act in furtherance of the crime occurred within this

JURY CHARGE

2197

1 district. If you find that the government has failed to prove
2 that any act in furtherance of the crime occurred within this
3 district or if you have a reasonable doubt on any element of
4 visa fraud, then you must acquit.

5 All right. We are in the home stretch.

6 So I want -- this is the final part of my charge to
7 you.

8 In a few minutes, you are going to begin your
9 deliberations, and I want to give you some general rules about
10 your deliberations.

11 I want to remind you that nothing that I've said in
12 these instruction or at any point in the trial is intended to
13 suggest that I think you should reach any particular verdict.
14 Your verdict is entirely up to you. In order for your
15 deliberations to proceed in an ordinarily way, you have to
16 have a foreperson. In this district, traditionally, juror
17 number 1 acts as the foreperson, but when you begin your
18 deliberations, if you all decide that you want to elect
19 another foreperson, you can do so.

20 The foreperson will be responsible for signing all
21 communications to the Court and for handing them to the deputy
22 marshal during your deliberations. But, of course, the
23 foreperson's vote is not entitled to any more weight than that
24 of any other juror.

25 Your duty is to reach a fair conclusion from the law

JURY CHARGE

2198

1 as I have given it to you and the evidence that's been
2 presented in this case. This is an important duty. When you
3 are in the jury room, listen to each other, discuss the
4 evidence and the issues in the case amongst yourself. It is
5 the duty of each jury to consult with your fellow jurors, to
6 deliberate with an eye toward reaching a verdict, if you can
7 do that without violating your individual judgment.

8 No one should surrender a conscientious conviction
9 of what the truth is and what the weight and effect of the
10 evidence is. Each of you must decide the case for yourself
11 and not merely give in to the conclusions of your fellow
12 jurors. You should examine the evidence and the issues before
13 you with candor and with frankness, and with proper deference
14 to and respect for the opinions of your fellow jurors.

15 You should not hesitate to reconsider your opinion
16 from time to time, and to change your opinion if you are
17 convinced that you are wrong. But don't surrender an honest
18 conviction about the weight and effect of the evidence just to
19 arrive at the verdict. Your decision must be unanimous. All
20 of you must agree. It is extremely important that you not
21 communicate with anyone outside the jury room about your
22 deliberations or about anything related to this case. You
23 can't use any electronic device or media, telephone, cell
24 phone, smart phone, tablet, computer, text messaging device,
25 blog, social networking site, to communicate with anybody

JURY CHARGE

2199

1 regarding any information about this case. You can't research
2 or do any kind of investigation about the case until after I
3 accept your verdict.

4 There is only one exception to this rule about
5 communicating. If you have a question for me, or if it
6 becomes necessary for you to communicate with me, you can send
7 a note through the deputy marshal that's signed by your
8 foreperson. No member of the jury should try to communicate
9 with me accept by a signed note, and I will never communicate
10 with any member of the jury on any subject touching on the
11 merits of this case other than in writing or here in an open
12 court. If during your deliberations you have questions about
13 the law or you want more explanation about the law, you may
14 send me a note.

15 During your deliberations, if you can't remember
16 part of the testimony, you may request that a witness'
17 testimony or portions of the testimony be sent back to you in
18 the jury room. If you want to see any of the exhibits, we'll
19 send those back, too.

20 Sometimes it is not always easy to locate the --
21 what you want, if you want some particular piece of testimony,
22 so be as specific as you can in requesting exhibits or
23 portions of testimony.

24 The government must prove the defendant's guilt
25 beyond a reasonable doubt, as we've already talked about. If

JURY CHARGE

2200

1 you find that the government meets this burden -- meets its
2 burden, then your verdict should be guilty. If the government
3 does not meet its burden, your verdict must be not guilty.

4 To reach a verdict, you must be unanimous. To
5 assist you, I prepared a verdict form that may help you in
6 your deliberations. On the verdict sheets are spaces that are
7 marked not guilty and guilty for each count. It is in no way
8 meant to tell you how to deliberate or decide the facts of the
9 case. The foreperson, when you have reached a verdict, the
10 foreperson should use a check mark in the appropriate space
11 for guilty or not guilty for each count of the indictment, and
12 the foreperson should also initial and put the date between
13 each mark on the verdict form.

14 As I said before, each of you is entitled to your
15 opinion, but you should consult with each other, reach an
16 agreement based solely and wholly on the evidence, if you can
17 do so without contradicting your individual judgment.

18 Each of you must decide the case for yourself.
19 However, if after carefully considering all the evidence and
20 the arguments of your jurors your view is different from the
21 others, you shouldn't change your opinion just because you are
22 outnumbered. Your final vote must reflect your conviction and
23 how the issues should be decided. When you have reached a
24 verdict, just send me a note that is signed by your foreperson
25 that says you have reached a verdict. Do not write down what

JURY CHARGE

2201

1 the verdict is.

2 You should never give a numerical count of where the
3 jury stands in its deliberations in any notes or
4 communications with the Court.

5 Ladies and gentlemen, the government, the defendant,
6 and the Court rely on you to give full and conscientious
7 deliberation and consideration to the issues and the evidence
8 before you. When you do that, you carry out your oaths as
9 jurors to render a true verdict.

10 I am going to ask you to wait for a minute. I want
11 to make sure I haven't left anything out. So I am going to
12 consult with counsel at the side.

13 (Sidebar conference.)

14 (Continued on the next page.)

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SIDEBAR CONFERENCE

2202

1 (WHEREUPON, the following proceedings were had at
2 sidebar, out of the hearing of the open courtroom, to wit:)

3 (The following occurred at sidebar.)

4 MR. SOLOMON: Is it the Court's intention to provide
5 the jury instructions, written instructions to the jury?

6 THE COURT: We're going to fix them.

7 MR. SOLOMON: I think we have a new nits. I don't
8 think most of these things need to be read to the jury, but if
9 we can bring them up now.

10 THE COURT: Sure.

11 MR. SOLOMON: So the first one was on informant
12 witnesses. My page number is 14.

13 So the sentence -- second sentence reads:
14 Informants are witnesses who the government paid for
15 information about a defendant.

16 THE COURT: Yes.

17 MR. SOLOMON: That's inconsistent with the evidence.
18 I think what's more accurate is, informants are witnesses who
19 provide information to the government and they are sometimes
20 paid.

21 THE COURT: Here's the only thing about this. We
22 distributed this to you with this language. So are we talking
23 about -- I want to be accurate, but --

24 MR. SOLOMON: That's the only edit of that type
25 of --

SIDEBAR CONFERENCE

2203

1 THE COURT: All right. Did they both get paid? I
2 don't remember.

3 MR. SOLOMON: No. Just Ken Wang got paid.

4 THE COURT: I suppose it should be accurate. Do you
5 object to that?

6 MR. CLEARY: Tell me what you --

7 MR. SOLOMON: Informants are witnesses who provide
8 information to the government. They are sometimes paid.

9 MR. CLEARY: I am fine with that.

10 THE COURT: Informants are witnesses -- say it
11 again.

12 MR. SOLOMON: Who provide information to the
13 government. They are sometimes paid.

14 THE COURT: Okay.

15 MR. SOLOMON: Next one I have is on page 22, and
16 this might be an older version here. You explained that you
17 would provide further instructions on reckless disregard.

18 THE COURT: I wondered if I forgot that, but I said
19 it, didn't I?

20 MR. SOLOMON: For -- you did. You did make that
21 instruction. So there is a further reckless disregard section
22 just on alien smuggling, but it did not occur in the forced
23 labor section theory.

24 MR. HEEREN: It is on page 43, where the
25 instruction -- the more detailed instruction occurs.

SIDEBAR CONFERENCE

2204

1 THE COURT: Okay. So that should go --

2 MR. HEEREN: That's specific to alien smuggling, but
3 just swapping out the alien language.

4 THE COURT: What page?

5 MR. HEEREN: It should go on page -- I think page
6 30, under third element, knew or recklessly disregarded.

7 THE COURT: This is -- okay. And then insert that
8 right there.

9 MR. SOLOMON: In other words, a version of that
10 language should appear in that element as well.

11 THE COURT: Okay.

12 MR. SOLOMON: I think there might be a version
13 control issue with page numbers. I have page 29. This is the
14 "knowingly" instruction for the first theory of Count 1.

15 THE COURT: Yes.

16 MR. SOLOMON: There's a reference -- page 28. I
17 apologize.

18 So there's a reference to reckless disregard in that
19 instruction that should not apply.

20 THE COURT: Where is this?

21 MR. SOLOMON: This is second sentence of the first
22 paragraph.

23 MR. HEEREN: Page 28, Your Honor.

24 THE COURT: Okay.

25 MR. SOLOMON: And last item I had was --

SIDEBAR CONFERENCE

2205

1 THE COURT: One of the jurors has to go to the
2 bathroom. Let me let them go.

3 (Sidebar conference paused.)

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5 (Continued on the next page.)

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1 (Open court.)

2 THE COURT: Sorry, folks. This will take me a
3 couple minutes. I know you need to use the facilities. I
4 understand. Please don't talk about the case. But it may be
5 a minute or so. Okay?

6 THE COURTROOM DEPUTY: All rise.

7 (WHEREUPON, at 12:24 p.m., the jury exited the
8 courtroom.)

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11 (Continued on the next page.)

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SIDEBAR CONFERENCE

2207

1 (Sidebar conference continues.)

2 THE COURT: Next?

3 MR. SOLOMON: The last issue -- Mr. Heeren also has
4 one issue. Last issue I had there was a shorthand reference
5 to Count 3 as --

6 THE COURT: Nothing in this charge was shorthand.
7 Believe me.

8 MR. SOLOMON: I understand. Apologies.

9 THE COURT: That's all right.

10 MR. SOLOMON: Conspiracy to conceal immigration
11 documents.

12 MR. CLEARY: What page?

13 MR. SOLOMON: Page 33. Aiding and abetting.

14 THE COURT: Yeah.

15 MR. SOLOMON: There's a reference to conspiracy to
16 conceal immigration documents, and I think the full title is
17 conspiracy to conceal passport and immigration documents.

18 THE COURT: Okay.

19 MR. SOLOMON: And then the following page, there was
20 another reference to concealing immigration documents. This
21 was under the statutory definition.

22 THE COURT: Right.

23 MR. SOLOMON: So it is the second line under the
24 statutory definition. I think it should be right there. So
25 we would ask for the insertion of the words "passport or

SIDEBAR CONFERENCE

2208

1 immigration documents."

2 MR. CLEARY: Sorry, Alex, where are you?

3 MR. SOLOMON: Page 34, under the statutory
4 definition.

5 MR. CLEARY: Got it.

6 MR. HEEREN: And then the last one, Your Honor, was
7 there was no mention of the special findings that needed to be
8 made in the verdict sheet. I don't think the Court needs to
9 say much except to say, "There's some additional findings that
10 you may need to make. Follow the instruction on the verdict
11 sheet, as appropriate," or something along those lines.

12 THE COURT: All right. I think I will tell them to
13 follow the instruction, assuming they can read.

14 MR. HEEREN: That's fine.

15 THE COURT: All right. What have you got?

16 MR. CLEARY: Nothing on the instructions. I had one
17 issue about sending exhibits back. You want to hear that now?

18 THE COURT: No. But we send them all back.

19 MR. CLEARY: The instruction says you send them back
20 if they ask.

21 THE COURT: I am going to send them all back.

22 MR. CLEARY: My issue on that, on the bank
23 documents, which we stimulated to, we only stipulated to the
24 documents themselves, and the documents got offered by the
25 government, they had transmittal letters on them, and we would

SIDEBAR CONFERENCE

2209

1 ask the government to delete the transmittal letters and just
2 put in the bank documents.

3 MR. SOLOMON: That's fine.

4 MR. HEEREN: I thought we had taken that out.

5 MR. SNELL: No, they are not out yet.

6 THE COURT: All right. Anything else?

7 MR. CLEARY: Nothing from us.

8 MR. SOLOMON: Thank you, Your Honor.

9 THE COURT: I think what I am going to do is, since
10 I am going to tell them about the verdict sheet, I think I
11 will change that language about the -- do you think it makes
12 sense to give them the reckless disregard on the --

13 MR. SOLOMON: I think it would because you promised
14 to give that instruction.

15 THE COURT: So that would be on page 30, and then I
16 also will tell them about the informant, and I will just tell
17 them that I misspoke, and I will tell them about the verdict
18 sheet. So those are the three things that I am going to tell
19 them about.

20 So let's give them a few minutes to do whatever they
21 need to do, and then -- we will be in recess for just a couple
22 minutes.

23 Do you want the verdict sheets?

24 MR. CLEARY: Thank you.

25 MR. HEEREN: Thank you, Your Honor.

SIDEBAR CONFERENCE

2210

1 THE COURT: All right. So let's reconvene in about
2 ten.

3 (WHEREUPON, at 12:24 p.m., a recess was had.)

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5 (Continued on the next page.)

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PROCEEDINGS

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1 THE COURTROOM DEPUTY: All rise.

2 THE COURT: All right, everybody can sit down.

3 All right, so just to be clear, and I'm just going
4 to say this because it annoys me. I gave out these
5 instructions before for the specific -- I know sometimes we
6 don't look at them and then when you hear them you decide you
7 want something else. I'm going change them. But it's
8 annoying.

9 You guys have not really annoyed me the whole trial,
10 but today. All right.

11 So I'll add that reckless disregard business, which
12 is on page 30, and the informant. And then I'll tell them to
13 read the verdict sheet.

14 All right, let's get the jury, please.

15 (Pause.)

16 THE COURTROOM DEPUTY: All rise.

17 (Jury enters the courtroom.)

18 THE COURTROOM DEPUTY: You may be seated.

19 THE COURT: I'm just going to take a little bit more
20 of your time. I want to clarify a couple of things.

21 I gave you an instruction about informant witness,
22 and I just want to clarify.

23 The informant witnesses in this case were Ray Tan
24 and Ken Wang. And informants are witness whose provide
25 information to the government and they are sometimes paid, not

1 always.

2 I also talked to you about reckless disregard as one
3 of the states of mind.

4 So in the forced labor count, which is Count Two,
5 the third element of that crime is new or recklessly
6 disregarded. And in this context of this case, reckless
7 disregard means deliberate indifference to facts that if
8 considered and weighed in a reasonable manner indicate the
9 highest probability that the venture was engaging in forced
10 labor.

11 And the last thing that I want to tell you about, I
12 did tell you that you'd have a verdict sheet. The verdict
13 sheet does require at points you to answer a couple -- you can
14 all read, but I'm just telling you that in addition to
15 checking it off, it requires you to answer a couple of
16 questions. So I think it will be clear when you look at it.

17 I just want to see the lawyer at the side one more
18 time to make sure that we dotted all our Is and crossed our
19 Ts.

20 (Continued on the next page.)

21 (Sidebar conference.)

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SIDEBAR CONFERENCE

2213

1 (The following occurred at sidebar.)

2 MR. SOLOMON: Absolutely.

3 THE COURT: Okay, nobody has any objections,

4 correct?

5 MR. CLEARY: Correct.

6 MR. SOLOMON: Yes.

7 THE COURT: All right.

8 (End of sidebar conference.)

9 (Continued on the next page.)

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PROCEEDINGS

2214

1 (In open court; Jury present.)

2 THE COURTROOM DEPUTY: Will the marshal please come
3 forward and be sworn.

4 (Whereupon, the marshal was sworn.)

5 THE MARSHAL: I do.

6 THE COURTROOM DEPUTY: Thank you.

7 THE COURT: All right, ladies and gentlemen, you may
8 begin your deliberations.

9 THE COURTROOM DEPUTY: All rise.

10 THE COURT: And just to be clear, we'll keep the
11 alternates separate from the 12 regular jurors.

12 (Jury retires to deliberate at 12:49 p.m.)

13 (Jury exits the courtroom.)

14 THE COURTROOM DEPUTY: You may be seated.

15 THE COURT: All right, so anything else.

16 MR. SOLOMON: One quick item, Your Honor.

17 We'll provide the Court with proposed instructions
18 on forfeiture this afternoon.

19 THE COURT: Okay. All right.

20 And you anticipate that's going to be what, just no
21 witnesses?

22 MR. SOLOMON: I think just a little bit of argument,
23 five to ten minutes.

24 THE COURT: In front of the jury.

25 MR. SOLOMON: Correct.

PROCEEDINGS

2215

1 THE COURT: Okay. All right. That's fine.

2 MR. CLEARY: Do you want us to wait in the
3 courtroom?

4 THE COURT: Just as long as you can -- if you're
5 easily reachable.

6 MR. CLEARY: We can stay in the lounge down the
7 hall.

8 THE COURT: You can do whatever you want.
9 Except don't go in the jury room.

10 (Whereupon, a recess was taken at 12:50 p.m.)
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PROCEEDINGS

2216

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Everybody can sit down.

4 Oh good, the defendant is here.

5 Has everybody seen the note?

6 Okay, so it's signed by the foreperson, it reads:

7 Can we have the testimony of Ray Tan and Ken Wang,
8 specifically regarding passports.

9 As I said, it's signed by the foreperson.

10 So can you track down that testimony?

11 MR. CLEARY: It will take us a while, but we
12 certainly can --

13 THE COURT: It shouldn't take you a while.

14 Is there a lot of it?

15 MR. CLEARY: I don't believe there is.

16 THE COURT: I don't think there is either.

17 Is there a way to search it?

18 MR. RICHARDSON: Yes.

19 THE COURT: Okay.

20 This is marked as Court Exhibit 3.

21 (Court Exhibit 3, was received in evidence.)

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23 (Whereupon, a recess was taken at 3:00 p.m.)

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PROCEEDINGS

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THE COURTROOM DEPUTY: All rise.

THE COURT: Hi everybody. Sit down.

All right, more transcript work.

They also want the testimony -- here's the note,
which we're giving copies of to you.

The first witness, Officer Dina Reilly Lionakis, and
Fire Inspector Barret testimony regarding passports at 210
Pavonia. Thanks.

That's signed by the foreperson.

This will be Court Exhibit 4.

(Court Exhibit 4, was received in evidence.)

THE COURT: So I'm going to stay here while you find
that, because I don't think that's going to take too long.

(Pause.)

THE COURT: I think while we're looking for that, we
should send the other testimony back.

So if you've got that let's --

MR. CLEARY: We do have an agreement on that, Your
Honor.

So you're not going to read the testimony to them?

THE COURT: No.

MR. CLEARY: Okay. So the testimony begins and ends
in most instances in the middle of a page. I would object to
anything going back that's not part of the relevant portion

PROCEEDINGS

2218

1 they asked for.

2 THE COURT: I mean, I hardly think it makes a
3 difference.

4 What do you want them to do? I mean it's admissible
5 evidence, it's --

6 MR. CLEARY: Okay.

7 THE COURT: I mean, do you really want me to black
8 out the thing before they can look at it?

9 MR. CLEARY: All right.

10 THE COURT: Are you okay?

11 All right, so let's send it back.

12 MR. SOLOMON: (Proffering.)

13 (Pause.)

14 THE COURT: So I can't imagine that this is an
15 incredibly complex set of negotiations. It's a pretty
16 discrete kind of testimony. Can we just send it back?

17 Oh, goody.

18 (Pause.)

19 THE COURT: Folks, we have another note.

20 The jury indicates that they've reached a verdict.

21 So I just want to make sure we're all clear on this,
22 because they reached a verdict, do you want me to send that
23 testimony back? It sounds like they don't want it.

24 Does everybody agree that that's the case?

25 MR. CLEARY: I agree.

PROCEEDINGS

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1 THE COURT: Okay, all right.

2 Just so the record is clear, the note says:

3 We have reached a verdict.

4 It's Court Exhibit Number 5, and it's signed by the
5 foreperson.

6 So let's get the jury.

7 (Court Exhibit 5, was received in evidence.)

8 THE COURT: I don't intend to bring the alternates
9 in.

10 Is that all right with everybody?

11 MR. RICHARDSON: Yes, Your Honor.

12 THE COURT: All right.

13 THE COURTROOM DEPUTY: All rise.

14 (Jury enters the courtroom.)

15 THE COURTROOM DEPUTY: You may be seated.

16 THE COURT: Okay. Ladies and gentlemen, we have
17 received your note indicating that you have reached a verdict.

18 Will the foreperson please rise.

19 Has the jury reached a verdict?

20 THE JURY: Yes, Your Honor.

21 THE COURT: With respect to Count One, forced labor
22 conspiracy. How do you find the defendant Dan Zhong; guilty
23 or not guilty?

24 THE JURY: Guilty.

25 THE COURT: If you unanimously find the defendant

PROCEEDINGS

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1 guilty as to Count One -- well, I'll say: Which of the
2 following do you unanimously find to the object of the
3 conspiracy in Count One:

4 A, provide or obtain a labor or services of one or
5 more persons by one or more prohibited means; B, benefit from
6 participation in a venture engaged in providing or obtaining
7 the labor or services or one or more persons by one or more
8 prohibited means or; C, both?

9 THE JURY: C both.

10 THE COURT: Count Two, forced labor. How do you
11 find the defendant Dan Zhong; guilty or not guilty?

12 THE JURY: Guilty.

13 THE COURT: Which of the following do you
14 unanimously find to be the basis of guilt for Count 2:

15 A, provided or obtained the labor or services of one
16 or more persons by one or more prohibited means; B, benefited
17 from participation in the venture engaged in, providing or
18 obtaining the labor or services of one or more persons by one
19 or more prohibited means; or C, both.

20 THE JURY: C both.

21 THE COURT: Count Three, concealing passports and
22 immigration documents in connection with forced labor. How do
23 you find the defendant Dan Zhong; guilty or not guilty?

24 THE JURY: Guilty.

25 THE COURT: Count Four, conspiracy to the commit

PROCEEDINGS

2221

1 alien smuggling. How do you find the defendant Dan Zhong;
2 guilty or not guilty?

3 THE JURY: Guilty.

4 THE COURT: If you unanimously find the defendant
5 guilty as to Count Four, did the defendant act for the purpose
6 of commercial advantage or private financial gain?

7 THE JURY: Yes.

8 THE COURT: Count Five, conspiracy to commit visa
9 fraud. How do you find the defendant Dan Zhong; guilty or not
10 guilty?

11 THE JURY: Guilty.

12 THE COURT: Thank you. You may be seated.

13 Would either side like the jury poled?

14 MR. CLEARY: I would, Your Honor.

15 THE COURT: All right.

16 Ladies and gentlemen, through your foreperson you
17 say that you have found the defendant guilty of Count One,
18 forced labor conspiracy; Count Two, forced labor; Count Three,
19 concealing passports and immigration documents in connection
20 with forced labor; Count Four, conspiracy to commit alien
21 smuggling; and Count Five, conspiracy to commit visa fraud.

22 Juror Number 1, is that your verdict?

23 THE JUROR: Yes.

24 THE COURT: Juror Number 2, is that your verdict?

25 THE JUROR: Yes.

PROCEEDINGS

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1 THE COURT: Juror Number 3, is that your verdict?

2 THE JURY: It is.

3 THE COURT: Juror Number 4, is that your verdict?

4 THE JUROR: Yes.

5 THE COURT: Jury Number 5, is that your verdict?

6 THE JUROR: Yes.

7 THE COURT: Juror Number 6, is that your verdict?

8 THE JUROR: Yes.

9 THE COURT: Juror Number 7, is that your verdict?

10 THE JUROR: Yes.

11 THE COURT: Juror Number 8, is that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Juror Number 9, is that your verdict?

14 THE JUROR: Yes.

15 THE COURT: Juror Number 10, is that your verdict?

16 THE JUROR: Yes.

17 THE COURT: Juror Number 11, is that your verdict?

18 THE JUROR: Yes.

19 THE COURT: Juror Number 12, is that your verdict?

20 THE JUROR: Yes.

21 THE COURT: All right, the jurors have been polled.

22 All right, I need to see lawyers on the side for
23 just one matter. Sit tight for just a second folks. With the
24 court reporter, please.

25 (Continued on the next page.)

SIDEBAR CONFERENCE

2223

1 (The following occurred at sidebar.)

2 THE COURT: Okay, so I guess in light of that
3 information, that you want the jury for forfeiture on Monday.

4 MR. CLEARY: Correct.

5 MR. SOLOMON: Yes.

6 THE COURT: The other thing is ordinarily I would
7 tell them they can talk about the case. I'm not sure that's a
8 great idea.

9 MR. CLEARY: I agree that they should not.

10 MR. SOLOMON: Agreed that they should not talk about
11 the case.

12 THE COURT: All right, so what I'm going to tell
13 them is that we have one more phase that they need to come
14 back on Monday. And we'll just get going then.

15 And it's just going to be argument?

16 MR. RICHARDSON: Yes.

17 MR. CLEARY: Yes.

18 THE COURT: Tell me how this is going to work.

19 (End of sidebar conference.)

20 (Continued on the next page.)

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1 (In open court; Jury present.)

2 THE COURT: Okay, ladies and gentlemen, when you
3 were selected, I told you that the case might last for four
4 weeks. It's not going to last for four weeks, but I do need
5 your services for an additional task on Monday at 9:30.

6 Ordinarily I would tell you that since you've
7 reached a verdict you can talk about the case, but I need your
8 services for an additional consideration on Monday morning.
9 So I'm going to continue to direct you not to talk about the
10 case; not to look anything up at all about the case, about
11 anything. And as I said, don't discuss it either amongst
12 yourself or with anyone else.

13 I thank you for your patience and for the attention
14 you've paid during the trial. As I said, I'm going to prevail
15 upon you to give me just a bit more of your time on Monday.

16 So we'll see you here at 9:30 on Monday morning.

17 Please have a good weekend. Thank you so much.

18 THE COURTROOM DEPUTY: All rise.

19 (Jury exits the courtroom.)

20 THE COURT: Wait. Hold on. I'm going to ask the
21 jurors to sit in the jury room for just a minute.

22 (Jury exits the courtroom.)

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24 (Continued on the next page.)

25 (Sidebar conference.)

SIDEBAR CONFERENCE

2225

1 (The following occurred at sidebar.)

2 THE COURT: We have alternate jurors. So I've never
3 actually been in this situation before. So if a juror were to
4 be become unavailable during the course of the forfeiture
5 proceeding, I really don't see how we can use alternate jurors
6 in that proceeding, since they didn't sit. I'm not -- I don't
7 know what the answer is. Maybe --

8 MR. CLEARY: I think you're right about that.

9 THE COURT: I don't know if I'm right because I --
10 another reason why I'm so annoyed by this is because I'd like
11 to know about what to do with them, had I known that this was
12 going to be the procedure. So I don't think any of us really
13 knows.

14 I hate to waste their time, but I would like to know
15 what the answer to that question is. Because what's the
16 alternative? Let's say a juror becomes unavailable? Then
17 what?

18 MR. RICHARDSON: We can theoretically proceed with
19 11, if that were necessary.

20 THE COURT: You want me to release the alternates?

21 MR. SOLOMON: We might have to research this and get
22 back to the Court, as soon as possible.

23 THE COURT: I think I'll just ask them to come back.
24 We did tell them it might be four weeks. Okay.

25 So let's get them. So I'm going to tell them to

SIDEBAR CONFERENCE

2226

1 come back. I'll thank them for their continued service. I
2 guess they're going to figure out that there was a verdict.

3 It's likely.

4 I mean --

5 MR. SOLOMON: They are going to hear the arguments
6 and understand from the arguments regarding forfeiture that
7 there has been a verdict.

8 THE COURT: You know, I'm going to drive off that
9 bridge when we come to it.

10 Yes, I'll just bring them out and ask them to come
11 back on Monday. All right.

12 (End of sidebar conference.)

13 (Continued on the next page.)

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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 (Alternate Jurors enter the courtroom.)

4 THE COURT: Everybody can sit down.

5 All right my stalwart group of alternate jurors, I
6 am going to ask you come back on Monday morning for some
7 additional proceeding at 9:30. We shouldn't be taking too
8 much more of your time.

9 I'm going to direct you to continue not to discuss
10 the case, either amongst yourself or with anyone else.

11 Please don't read any news accounts or anything like
12 that. But I will see you Monday morning at 9:30.

13 I hope you have a wonderful weekend. Thank you.

14 THE COURTROOM DEPUTY: All rise.

15 (Alternate jurors exit the courtroom.)

16 THE COURT: All right, you can all have a seat.

17 So between now -- at least I'd like to know this
18 sooner rather than later what your positions are on the extent
19 to which should it happen, I don't have any reason to think it
20 should happen, but should one of the regular jurors become
21 unavailable, whether an alternate can be substituted in for
22 the second phase for the forfeiture portion of the trial.

23 I don't know what the answer is, but I'm sure you'll
24 tell me.

25 Is there anything else that we have to resolve

1 today?

2 MR. CLEARY: No, Your Honor.

3 THE COURT: No?

4 MR. SOLOMON: So, Your Honor, how would you like to
5 address the issue of the additional jury instructions?

6 We provided the Court the government's proposed
7 instructions. I understand the defense is providing their
8 instructions as well.

9 Are we going to have an additional charging
10 conference on Monday morning?

11 THE COURT: I hope not.

12 No, I'll look at them. I've asked -- I think we've
13 asked you to do that same thing of redlining. I don't know
14 how -- how much difference you'll have, but I guess I'll find
15 out.

16 So I'll let you know -- we'll talk about that before
17 we bring the jurors out.

18 And just, do you have any approximation of how long
19 your presentation will be?

20 MR. SOLOMON: Five to ten minutes.

21 THE COURT: And what about you?

22 MR. SNELL: Comparable.

23 THE COURT: Okay. So it's basically going to
24 consist of argument?

25 MR. SOLOMON: Yes.

1 THE COURT: Then I'll give them another charge, and
2 then they'll decide what they're going to decide.

3 What's the standard of proof?

4 MR. SOLOMON: Preponderance.

5 THE COURT: Okay. So let's meet back here Monday
6 morning then. All right.

7 Thanks so much. Have a good weekend.

8 MR. SOLOMON: Thank you, Your Honor.

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11 (Proceedings adjourned at 4:30 p.m. to resume on
12 March 25, 2019 at 9:30 a.m.)

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14 I N D E X

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